



# Federal Register

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Monday

Sept. 11, 2000



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- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
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  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** September 13, 2000, at 9:00 a.m.  
**WHERE:** Office of the Federal Register  
Conference Room  
800 North Capitol Street, NW.  
Washington, DC  
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202-523-4538



Printed on recycled paper.

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phone numbers, online resources, finding aids, reminders,  
and notice of recently enacted public laws.

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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 97-056-18]

#### Mediterranean Fruit Fly; Quarantined Areas, Regulated Articles, Treatments

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with minor, nonsubstantive changes, interim rules that amended the Mediterranean fruit fly regulations. In a series of interim rules published in the **Federal Register** between June 1997 and October 1998, we amended the Mediterranean fruit fly regulations by establishing and removing quarantined areas in the State of Florida. Two of the interim rules also added a regulated article; added the use of irradiation as a treatment for berries, fruits, nuts, and vegetables that are regulated articles; and added a definition for core area. These actions were necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States, and to provide an additional option for qualifying regulated articles for movement from quarantined areas.

**EFFECTIVE DATE:** September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the

world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks. Regulations to prevent the interstate spread of the Medfly from infested areas of the United States are contained in 7 CFR 301.78 through 301.78-10, referred to below as the regulations.

In an interim rule effective June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537-33539, Docket No. 97-056-2), we quarantined Hillsborough County, FL, because of an infestation of the Medfly. Subsequently, we published a series of interim rules that added to or removed from the list of quarantined areas certain portions of Dade, Highlands, Hillsborough, Lake, Manatee, Marion, Orange, Polk, and Sarasota Counties, FL; added eggplant, other than commercially produced eggplant, to the list of regulated articles; provided for the use of irradiation as a treatment for berries, fruits, nuts, and vegetables; and added a definition for *core area*. These interim rules were made effective on July 3, 1997 (62 FR 36976-36978, Docket No. 97-056-3), August 7, 1997 (62 FR 43269-43272, Docket No. 97-056-4), September 4, 1997 (62 FR 47553-47558, Docket No. 97-056-5), October 15, 1997 (62 FR 54571-54572, Docket No. 97-056-7), November 14, 1997 (62 FR 61897-61898, Docket No. 97-056-8), April 17, 1998 (63 FR 19797-19798, Docket No. 97-056-9 and 63 FR 20053-20054, Docket No. 98-046-1), May 5, 1998 (63 FR 25748-25750, Docket No. 97-056-11), May 13, 1998 (63 FR 27439-27440, Docket No. 97-056-12), June 5, 1998 (63 FR 31887-31888, Docket No. 97-056-13), August 7, 1998 (63 FR 43287-43289, Docket No. 97-056-14), August 13, 1998 (63 FR 44538-44539, Docket No. 97-056-15), August 24, 1998 (63 FR 45392-45393, Docket No. 97-056-16), and October 2, 1998 (63 FR 54037-54038, Docket No. 97-056-17).

Comments on these interim rules were required to be received on or before 60 days after the date of publication in the **Federal Register**. We received comments on only one of the interim rules.

In that interim rule, which was effective September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47553-47558, Docket No. 97-056-5), we amended the regulations by, among other things, providing for the use of irradiation as a treatment for berries, fruits, nuts, and vegetables that are regulated articles. This change provided an additional option for qualifying those regulated articles for interstate movement from quarantined areas.

We received three comments on this rule. They were from government agencies and an association. They are discussed below.

Two of the commenters said that in § 301.78-10(c)(5)(ii) we should use the term "dosimetry system" rather than the word "dosimeter" in explaining how an absorbed dose should be measured when using irradiation treatment on berries, fruits, nuts, and vegetables. We agree with the commenters. It is the system that is used for the measurement of irradiation; the dosimeter is only a part of the dosimetry system. We are making this change in this final rule.

One commenter suggested that we reword our reference in § 301.78-10(c)(5)(iii) to American Society for Testing and Materials (ASTM) standards. The interim rule stated that the number and placement of dosimeters used must be in accordance with ASTM standards. This statement is correct, but it suggests that other important aspects of the dosimeter, such as calibration, do not need to follow these standards. We are correcting that language in this final rule.

Another commenter pointed out an incorrect address. In § 301.78-10, footnote 10, we stated that if there is a question as to the adequacy of the construction of a carton for shipping fruits and vegetables, requests for approval of the carton, along with a sample of the carton, could be sent to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Phytosanitary Issues Management Team, 4700 River Road Unit 140, Riverdale, Maryland 20737-1236. This address is incorrect. Requests should be sent to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565. We are correcting the address in this final rule.

Therefore, for the reasons given in the interim rules and in this document, we are adopting the interim rules as final, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rules concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

**Effective Date:** Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule makes minor, nonsubstantive changes to the regulations. They are necessary to clarify requirements concerning the use of irradiation treatment on berries, fruits, nuts, and vegetables that are regulated because of the Medfly and to correct an address. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rules amending 7 CFR part 301 that were published at 62 FR 33537–33539 on June 20, 1997; 62 FR 36976–36978 on July 10, 1997; 62 FR 43269–43272 on August 13, 1997; 62 FR 47553–47558 on September 10, 1997; 62 FR 54571–54572 on October 21, 1997; 62 FR 61897–61898 on November 20, 1997; 63 FR 19797–19798 on April 22, 1998; 63 FR 20053–20054 on April 23, 1998; 63 FR 25748–25750 on May 11, 1998; 63 FR 27439–27440 on May 19, 1998; 63 FR 31887–31888 on June 11, 1998; 63 FR 43287–43289 on August 13, 1998; 63 FR 44538–44539 on August 20, 1998; 63 FR 45392–45393 on August 26, 1998; and 63 FR 54037–54038 on October 8, 1998, are adopted as final with the following changes:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

2. Section 301.78–10 is amended as follows:

a. In paragraph (c)(3)(i), by revising footnote 10 to read “<sup>10</sup> If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565.”

b. By revising paragraphs (c)(5)(ii) and (c)(5)(iii).

#### § 301.78–10 Treatments.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) Absorbed dose must be measured using a dosimetry system that can accurately measure an adsorbed dose of 225 Gray (22.5 krad).

(iii) The utilization of the dosimetry system, including its calibration and the number and placement of dosimeters used, must be in accordance with the American Society for Testing and Materials (ASTM) standards.<sup>12</sup>

\* \* \* \* \*

Done in Washington, DC, this 5th day of September 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–23227 Filed 9–8–00; 8:45 am]

**BILLING CODE 3410–34–P**

#### FARM CREDIT ADMINISTRATION

##### 12 CFR Parts 612 and 614

**RIN 3052–AB95**

#### Standards of Conduct; Loan Policies and Operations

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Confirmation of effective date; partial withdrawal.

**SUMMARY:** The FCA published a direct final rule, with opportunity for comment, amending parts 612 and 614 on June 30, 2000 (65 FR 40486). The rule rewrote part 612 of our Standards of Conduct regulations in plain language. The rule amended part 614 to

correctly reference our Standard of Conduct regulations. The opportunity for comment expired on July 31, 2000. We received significant adverse comment on part 612. As a result we are withdrawing the revision of part 612 of the direct final rule. The amendment to part 614 will become effective in accordance with this document.

**DATES:** The regulation amending 12 CFR part 614 published on June 30, 2000 (65 FR 40486) is effective September 11, 2000. The regulation revising 12 CFR part 612 published on June 30, 2000 (65 FR 40486) is withdrawn September 11, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Howard Rubin, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** Direct final rulemaking enables Federal agencies to quickly adopt noncontroversial regulations without the usual notice and comment period. On June 30, 2000, we notified you that this rule would become effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session unless we receive significant adverse comment by July 31, 2000. A significant adverse comment is one where a commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable. Our June 30, 2000 notice informed you that if we received a significant adverse comment about any amendment, paragraph, or section of this rule, we would withdraw that amendment, paragraph, or section, but adopt all other provisions as a final rule. We received significant adverse comments on several provisions of part 612 of the rule. The breadth of the comments makes it impossible to adopt the remaining provisions as a final rule. Therefore, part 612 of the rule will not become effective. The amendment to § 614.4440(f) in the direct final rule will take effect on September 11, 2000.

Dated: September 6, 2000.

**Kelly Mikel Williams,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 00–23268 Filed 9–8–00; 8:45 am]

**BILLING CODE 6705–01–P**

<sup>12</sup> Designation E 1261, “Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing,” American Society for Testing and Materials, Annual Book of ASTM Standards.

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000-SW-32-AD; Amendment 39-11895; AD 2000-18-10-AD]

RIN 2120-AA64

**Airworthiness Directives; Kaman Model K-1200 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Kaman Model K-1200 helicopters. This action requires replacing certain unairworthy sprag clutches with airworthy sprag clutches. This amendment is prompted by two incidents of sprag clutch failure during external load operations. The actions specified in this AD are intended to prevent a malfunctioning transmission clutch, loss of drive to the main rotor system, and subsequent loss of control of the helicopter.

**DATES:** Effective September 26, 2000.

Comments for inclusion in the Rules Docket must be received on or before November 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW-32-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** Wayne Gaulzetti, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7156, fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** This amendment adopts a new AD for Kaman Model K-1200 helicopters. This action requires replacing any sprag clutch, part number (P/N) K974110-005, with P/N K974110-003. This amendment is prompted by two incidents of sprag clutch, P/N K974110-005, failure during external load operations. The actions specified in this AD are intended to prevent a malfunctioning transmission clutch. This condition, if not corrected, could result in loss of drive to the main rotor system, and subsequent loss of control of the helicopter.

The FAA has reviewed Kaman Aerospace Corporation Service Bulletin

No. 090, dated July 13, 2000, which describes procedures for removing the sprag clutch, P/N K974110-005.

We have identified an unsafe condition that is likely to exist or develop on other Kaman Model K-1200 helicopters of the same type design. This AD is being issued to prevent a malfunctioning transmission clutch, loss of drive to the main rotor system, and subsequent loss of control of the helicopter. This AD requires replacing any sprag clutch, P/N K974110-005, with P/N K974110-003. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the delivery of power to the main rotor system of the helicopter. Therefore, replacing any sprag clutch, P/N K974110-005, with P/N K974110-003 is required within 10 hours time-in-service, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 4 helicopters will be affected by this AD, that it will take approximately 4 work hours to replace the sprag clutch, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$17,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$68,960.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000-SW-32-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000-18-10 Kaman Aerospace**

**Corporation:** Amendment 39-11895.

**Docket No.** 2000-SW-32-AD.

**Applicability:** Model K-1200 helicopters, with sprag clutch, part number (P/N) K974110-005, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required within 10 hours time-in-service, unless accomplished previously.

To prevent a malfunctioning transmission clutch, loss of drive to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace each sprag clutch, P/N K974110-005, with a sprag clutch, P/N K974110-003. Sprag clutch, P/N K974110-005, is considered unairworthy.

**Note 2:** Kaman Aerospace Corporation Service Bulletin No. 090, dated July 13, 2000, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter, without an external load, to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on September 26, 2000.

Issued in Fort Worth, Texas, on September 1, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00-23207 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-13-U**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 95**

[Docket No. 30177; Amdt. No. 424]

**IFR Altitudes; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace system. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

**The Rule**

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and

efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 95**

Airspace, Navigation (air).

Issued in Washington, D.C. on August 21, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, October 5, 2000.

1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

## REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Effective Date: October 5, 2000]

From			To			MEA	
§ 95.1001 Direct Routes—U.S. Is Amended To Delete							
Gainesville, FL VORTAC ..... *1400—MOCA			Royes, FL FIX .....			*2500	
Craig, FL VORTAC .....			Gainesville, FL VORTAC .....			24000	
From/To		Total distance	Changeover distance	Point from	Track angle	MEA	MAA
§ 95.5000 High Altitude RNAV Routes Is Amended To Delete J814R							
Pantt, AK WP .....		169.3				28000	45000
Felaw, AK WP .....							
Felaw, AK WP .....		212.4	120	FELAW	043/223 to Felaw .....	28000	45000
Jensu, AK WP .....					043/223 to Cop .....		
Jensu, AK WP .....		223.3	102	JENSU	044/224 to Jensu .....	28000	45000
Fairbanks, AK VORTAC .....					044/224 to Cop .....		
					047/227 to Fairbanks.		
From			To			MEA	
Color Routes—							
§ 95.4 Green Federal Airway 8 Is Amended To Read in Part							
Shemya, AK NDB ..... *6,300—MOCA			Mount Moffett, AK NDB/DME .....			*8,000	
HF Communication required							
Mount Moffett, AK NDB/DME ..... *8,000—MOCA			Dutch Harbor, AK NDB/DME .....			*9,000	
HF Communication required							
§ 95.6001 Victor Routes—U.S.							
§ 95.6001 VOR Federal Airway 1 Is Amended To Read in Part							
Rapun, NC FIX ..... *1,600—MOCA			Layze, NC FIX .....			*5,000	
§ 95.6008 VOR Federal Airway 8 Is Amended To Read in Part							
Grand Junction, CO VORTAC .....			Squat, CO FIX .....			10,300	
§ 95.6051 VOR Federal Airway 51 Is Amended To Read in Part							
Louisville, KY VORTAC ..... *2,300—MOCA			NABB, IN VORTAC .....			*10,000	
§ 95.6053 VOR Federal Airway 53 Is Amended To Read in Part							
Louisville, KY VORTAC ..... *3,000—MOCA			House, IN FIX .....			*10,000	
§ 95.6067 VOR Federal Airway 67 Is Amended To Read in Part							
Vandalia, IL VORTAC ..... Cleek, IL FIX .....			Cleek, IL FIX ..... Capital, IL VORTAC .....			2,500 6,000	
§ 95.6134 VOR Federal Airway 134 Is Amended To Read in Part							
Grand Junction, CO VORTAC .....			Paces, CO FIX ..... NE BND ..... SW BND .....			11,000 9,000	
§ 95.6001 VOR Federal Airway 162 Is Amended To Delete							
Martinsburg, WV VORTAC ..... *3900—MOCA			Hyper, MD FIX .....			*5000	
Hyper, MD FIX ..... *3100—MOCA			Harrisburg, PA VORTAC .....			*4000	
§ 95.6162 VOR Federal Airway 162 Is Amended To Read in Part							
Bobss, PA FIX .....			East Texas, PA VORTAC .....			3000	

From		To		MEA	
§ 95.6171 VOR Federal Airway 171 Is Amended To Read in Part					
Louisville, KY VORTAC ..... *3,000—MOCA		Scoto, IN FIX .....		*10,000	
Scoto, IN FIX ..... *3,000—MOCA		Terre Haute, IN VORTAC .....		*4,000	
§ 95.6220 VOR Federal Airway 220 Is Amended To Read in Part					
Grand Junction, CO VORTAC .....		Paces, CO FIX .....		.....	
		NE BND .....		11,000	
		SW BND .....		9,000	
§ 95.6296 VOR Federal Airway 296 Is Amended To Read in Part					
Fayetteville, NC VOR/DME ..... *2,100—MOCA		Rapvy, NC FIX .....		*3,000	
Rapvy, NC FIX ..... *2,100—MOCA		Wilmington, NC VORTAC .....		*5,000	
§ 95.6319 VOR Federal Airway 319 Is Amended To Read in Part					
Arsen, AK FIX ..... *2,000—MOCA		Fanci, AK FIX .....		*4,000	
Hooper Bay, AK VOR/DME .....		Nanwak, AK NDB/DME .....		2,300	
Nanwak, AK NDB/DME .....		Kipnuk, AK VOR/DME .....		2,500	
§ 95.6453 VOR Federal Airway 453 Is Amended To Read in Part					
Bethel, AK VORTAC .....		Unalakleet, AK VORTAC .....		*9,000	
§ 95.6591 VOR Federal Airway 591 Is Amended To Read in Part					
Grand Junction, CO VORTAC .....		Paces, CO FIX .....		11,000	
		NE BND .....		9,000	
		SW BND .....			
From		To		MEA	MAA
§ 95.7001 Jet Routes					
§ 95.7111 Jet Route No. 111 Is Amended To Delete					
Anchorage, AK Vortac .....		Middleton island, AK VOR/DME .....		18000	45000
Middleton Island, AK .....		Snout AK, WP .....		24000	45000
§ 95.7115 Jet Route No. 115 Is Amended To Read in Part					
Shemya, AK NDB .....		Mount Moffett, AK NDB/DME .....		18000	45000
Mount Moffett, AK NDB/DME .....		Dutch Harbor, AK NDB/DME .....		18000	45000
§ 95.7127 Jet Route No. 127 Is Amended To Delete					
Augin, AK FIX .....		King Salmon, AK VOR/DME .....		18000	45000
§ 95.7501 Jet Route No. 501 Is Amended To Delete					
Bethel, AK VORTAC .....		Yearr, AK FIX .....		29000	45000
Yearr, AK FIX .....		Mixer, AK FIX .....		35000	45000
§ 95.7501 Jet Route No. 501 Is Amended To Read in Part					
Vidda, AK FIX .....		Bethel, AK VORTAC .....		18000	45000
§ 95.7511 Jet Route No. 511 Is Amended To Delete					
Encor, AK FIX .....		Dillingham, AK VORTAC .....		28000	45000
From		To		Changeover points	
				Distance	From
§ 95.8003 VOR Federal Airways Changeover Points Airway Segment V453					
Unalakleet, AK VORTAC .....		Bethek, AK VORTAC .....		81	Unalakleet

[FR Doc. 00-23186 Filed 9-8-00; 8:45 am]

BILLING CODE 4910-13-M

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AF40

#### Supplemental Security Income; Determining Disability for a Child Under Age 18

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** On February 11, 1997, we published interim final rules with a request for comments to implement the Supplemental Security Income (SSI) childhood disability provisions of sections 211 and 212 of Public Law (Pub. L.) 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. We are now publishing revised final rules in response to public comments. We are also conforming our rules to amendments to Public Law 104-193 made by the Balanced Budget Act of 1997, Public Law 105-33. Finally, we are simplifying and clarifying some rules in keeping with the President's goal of using plain language in regulations.

**DATES:** These rules are effective January 2, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Georgia Myers, Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, regulations@ssa.gov, (410) 965-3632 or TTY (410) 966-5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet web site, *SSA Online*, at [www.ssa.gov](http://www.ssa.gov).

**SUPPLEMENTARY INFORMATION:** We are revising and making final the interim final rules we published on February 11, 1997, to implement the childhood disability provisions of Public Law 104-193 (62 FR 6408). Even though we published interim final rules in 1997, we asked for public comments on those rules. We are now summarizing and responding to the public comments and making revisions to the interim final rules based on the public comments and on our program experience in applying the interim rules since February 1997. In the final rules, we continue to define the statutory standard of "marked and severe functional limitations" in terms

of marked limitations in two areas of functioning or extreme limitation in one such area. However, we are also making a number of changes to our rules on functional equivalence and "other factors" in response to the comments.

We are also conforming our rules to amendments to Public Law 104-193 made by the Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251. Even though the amendments were enacted after we published the interim final rules, the changes are required by the statute and make no discretionary policy changes. We are also simplifying and clarifying the language of some rules in keeping with the President's goal of using plain language in regulations.

A number of individuals who commented on the interim final rules expressed concern that we had not consulted with outside experts in the development of those rules. Given the short time we had under Public Law 104-193 to develop the interim final rules, it was not feasible to engage in the type of consultation the commenters suggested before we published those rules. However, in response to the comments, and to ensure that these final rules are as accurate and inclusive as possible, we asked a number of individual experts for information as we formulated these final rules. The experts included pediatricians, psychologists, and other pediatric specialists, and individual advocates for children with disabilities who have expert knowledge about the SSI program.

#### History

For a detailed history of the childhood disability provisions before the changes made by Public Law 104-193, interested readers may review the preamble to the interim final rules (62 FR 6408). That preamble explains how we first implemented the prior statutory definition of disability for children, based on "comparable severity" to the definition of disability for adults, and the changes we made to our rules in 1991 after the Supreme Court's decision in *Sullivan v. Zebley*, 493 U.S. 521 (1990).

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2105, removed the comparable severity standard and provided a new statutory definition of disability for children claiming SSI benefits. It also directed us to make significant changes in the way we evaluate childhood disability claims. Under the law, which created a new section 1614(a)(3)(C) of the Social Security Act (the Act), a child's impairment or combination of

impairments must cause more serious impairment-related limitations than the old law and our prior regulations specified.

Section 1614(a)(3)(C) of the Act provides the following definition of disability for children claiming SSI benefits:

(C)(i) An individual under the age of 18 shall be considered disabled for the purposes of this title if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(ii) Notwithstanding clause (i), no individual under the age of 18 who engages in substantial gainful activity \* \* \* may be considered to be disabled.

The conference report that accompanied Public Law 104-193 explained:

The conferees intend that only needy children with severe disabilities be eligible for SSI, and the Listing of Impairments and other current disability determination regulations as modified by these provisions properly reflect the severity of disability contemplated by the new statutory definition. In those areas of the Listing that involve domains of functioning, the conferees expect no less than two marked limitations as the standard for qualification. The conferees are also aware that SSA uses the term "severe" to often mean "other than minor" in an initial screening procedure for disability determination and in other places. The conferees, however, use the term "severe" in its common sense meaning.

H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess. 328 (1996), *reprinted in* 1996 U.S. Code, Cong. and Ad. News 2649, 2716. The House report contains similar language. See H.R. Rep. No. 651, 104th Cong., 2d Sess. 1385 (1996), *reprinted in* 1996 U.S. Code, Cong. and Ad. News 2183, 2444.

Further provisions concerning childhood disability adjudication are summarized below with references to the relevant sections of Public Law 104-193 and, where appropriate, the Act.

- We were directed to remove references to "maladaptive behavior" in the prior personal/behavioral domain from §§ 112.00C2 and 112.02B2c(2) of the childhood mental disorders listings (Public Law 104-193, section 211(b)(1)).

- We were directed to discontinue the individualized functional assessment (IFA) for children in §§ 416.924d and 416.924e of our former rules, which we had used since 1991 (Pub. L. 104-193, section 211(b)(2)).

- Within 1 year after the date of enactment, we were to redetermine the eligibility of individuals under the age

of 18 who qualified for SSI based on disability as of August 22, 1996, and whose eligibility might terminate because of changes made by Public Law 104–193. We were required to use the eligibility criteria we use for new applicants, not the medical improvement review standard in section 1614(a)(4) of the Act and § 416.994a that we use in continuing disability reviews (CDRs) (Pub. L. 104–193, section 211(d)(2)).

- The medical improvement review standard for determining continuing eligibility for children was revised to conform to the new definition of disability for children (Pub. L. 104–193, section 211(c); section 1614(a)(4)(B) of the Act).

- Not less frequently than once every 3 years, we must conduct a CDR for any childhood disability recipient eligible by reason of an impairment(s) that is likely to improve. At the option of the Commissioner, we may also perform a CDR with respect to those individuals under age 18 whose impairments are unlikely to improve (Pub. L. 104–193, section 212(a); section 1614(a)(3)(H)(ii) of the Act).

- We must redetermine the eligibility of individuals who were eligible for SSI based on disability in the month before the month in which they attained age 18. This age-18 redetermination must use the initial adult eligibility rules and must occur during the 1-year period beginning on the individual's 18th birthday. The medical improvement review standard used in CDRs does not apply to these redeterminations (Pub. L. 104–193, section 212(b); section 1614(a)(3)(H)(iii) of the Act).

- We must conduct a CDR not later than 12 months after the birth of the child for any child whose low birth weight is a contributing factor material to our determination that the child was disabled (Pub. L. 104–193, section 212(c); section 1614(a)(3)(H)(iv) of the Act).

- At the time of a CDR, a child's representative payee must present evidence that the child is and has been receiving treatment to the extent considered medically necessary and available for the disabling impairment. If a payee refuses without good cause to provide such evidence, we may select another representative payee, or pay benefits directly to the child, if we determine that it is appropriate and in the best interests of the child (Pub. L. 104–193, section 212(a); section 1614(a)(3)(H)(ii) of the Act).

#### The Interim Final Rules

The interim final rules we published on February 11, 1997, implemented all

of the provisions of sections 211 and 212 of Pub. L. 104–193, except section 211(d)(2). See 62 FR 6408; corrected at 62 FR 13537, March 21, 1997, and 62 FR 36460, July 8, 1997. Section 211(d)(2) required us to redetermine the eligibility of children who might be affected by the change in law, and did not require regulations. In brief, we deleted references to the former standard of “comparable severity” to adults and deleted the IFA regulations and all references to the IFA in other regulations. We deleted references to “maladaptive behaviors” and related references in the sections of our regulations and the Listing of Impairments cited in Pub. L. 104–193. We also made other changes in our rules that were necessary because of these revisions.

In §§ 416.902 and 416.906 of the interim final rules, we explained that, to be found disabled, an individual under age 18 must have “marked and severe functional limitations.” In § 416.902, we explained that the term “marked and severe functional limitations,” when used as a phrase, means the standard of disability in the Act for children claiming SSI benefits. This standard of disability requires a level of severity that meets, medically equals, or functionally equals the severity of an impairment(s) in the listings; *i.e.*, is of listing-level severity. We explained that the separate words “marked” and “severe” are also terms used throughout our rules, but the meanings of these words in the phrase “marked and severe functional limitations” are not the same as their meanings when used separately.

Other significant changes made by the interim final rules included the following:

- We revised § 416.924, “How we determine disability for children,” to reflect the changes made by Pub. L. 104–193 and to establish a new sequential evaluation process for determining disability for children. The new three-step process required a child who was not working to show that he or she had a “severe” impairment or combination of impairments that met, medically equaled, or functionally equaled the severity of an impairment(s) in the listings.

- In new § 416.924(g) we referred to a Childhood Disability Evaluation Form, Form SSA–538, which we issued in conjunction with the interim final rules. Section 416.924(g) required our adjudicators (except disability hearing officers) at the initial and reconsideration levels of our administrative review process to complete an SSA–538 to show their findings in each case. We also explained

that disability hearing officers, administrative law judges, and administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will not complete the form but will indicate their findings at each step in the sequential evaluation process in their determinations or decisions.

- We revised § 416.925(b)(2), which explains the purpose of the childhood listings in part B of the listings, to explain that “listing-level severity” generally means marked limitations in two broad areas of functioning or extreme limitation in one such area.

- We revised § 416.926 to provide rules for determining medical equivalence for both adults and children. Our prior rules had addressed medical equivalence for children separately, in § 416.926a. We also incorporated in § 416.926 of the interim final rules language from prior § 416.926a and our operating instructions to clarify the rules. We also intended the changes to be consistent with our rules in § 404.1526 (the rule for disability claims under title II of the Act), which we did not change in the interim final rules.

- We published revised and expanded guidelines for determining functional equivalence to the listings in § 416.926a. The interim final rules continued to provide four methods for determining functional equivalence, and the primary method continued to be evaluating whether a child had marked limitations in two broad areas of development or functioning or extreme limitation in one area. We also added a new area, called “motor development” or “motor functioning,” to help our adjudicators better evaluate physical impairments. We also retained our requirement that a finding of functional equivalence must be related to a particular listing. Generally, we used a childhood mental disorders listing to make this finding. However, adjudicators could use any listing that included disabling functional limitations among its criteria.

In publishing the improved functional equivalence rules, we noted that even though Congress eliminated the IFA, it directed us to continue to evaluate a child's functional limitations where appropriate, although using a higher level of severity than under the former IFA. Congress also explicitly endorsed our functional equivalence policy as a means to evaluate impairments that would not meet or medically equal any listings and without which some needy children with severe disabilities would not be found eligible. (62 FR 6413)

- We revised the rules in §§ 416.990 and 416.994a relating to CDRs of children to reflect the changes in the frequency of CDRs. The changes we made to these rules included requiring CDRs for children who qualified because of low birth weight, and making conforming changes to reflect the definition of disability for children in Pub. L. 104–193.

- We published a new § 416.987 to provide rules for redetermining the eligibility of individuals who attain age 18 and who were eligible for SSI based on disability in the month before the month in which they attained age 18. The section included a rule that we would not count an individual's earnings when we determine disability under this section. It also provided rules for notifying individuals who will have these redeterminations.

- We revised §§ 416.635 and 416.994a of our rules to include the statutory requirement that, at the time of a CDR, a child's representative payee must present evidence that the child is and has been receiving treatment that is considered medically necessary and available for the disabling impairment(s). We also explained how we would determine whether and how treatment was medically necessary and available.

We made many other changes to conform our rules to the major changes noted above. We also expanded and clarified several rules, including sections in the listings, and defined terms related to the new regulations. For a complete description of the changes in the interim final rules and our reasons for making them, interested readers may refer to the preamble to the interim final rules.

#### **The Balanced Budget Act of 1997 (Pub. L. 105–33)**

Pub. L. 105–33, 111 Stat. 251, enacted on August 5, 1997, contained two provisions that affect these final rules, and other provisions that affected the redeterminations and protected the Medicaid eligibility of children who lost SSI eligibility because of the new disability standard.

The amendments affecting these final rules provided the following:

- Pub. L. 104–193 required us to perform a redetermination of a beneficiary's eligibility within 1 year after the individual turns 18. Pub. L. 105–33 changed this requirement and provided that we may perform this redetermination either during the 1-year period beginning on the individual's 18th birthday, or in lieu of a CDR whenever we determine that the individual's case is subject to a

redetermination (Pub. L. 105–33, section 5522(a)(1); section 1614(a)(3)(H)(iii) of the Act).

- Pub. L. 104–193 required us to do a CDR not later than 12 months after the birth of a child for whom low birth weight is a contributing factor material to our determination of disability. Pub. L. 105–33 changed this provision to provide that we do not have to do a CDR by age 1 if we determine at the time of our initial disability determination that the child's impairment(s) is not expected to improve by age 1, and we schedule a CDR for a time after the child turns age 1 (Pub. L. 105–33, section 5522(a)(2)(B); section 1614(a)(3)(H)(iv)(VI) of the Act).

Pub. L. 105–33 also extended the deadline for redetermining the eligibility of children who might be affected by the new disability standard. Pub. L. 104–193 required us to perform redeterminations within 1 year after enactment of the law, or by August 22, 1997. Section 5101 of Pub. L. 105–33 extended that date by an additional 6 months, to February 22, 1998. For any redetermination not performed by that date, the law also allowed us to perform the redeterminations "as soon as practicable thereafter." Because we do not have regulations addressing this redetermination process, this provision of Pub. L. 105–33 does not affect these final rules.

Finally, section 4913 of Pub. L. 105–33 required States to continue Medicaid coverage for disabled children who were receiving SSI as of the enactment date of Pub. L. 104–193 if they lost SSI eligibility because of the changes to the definition of disability. The authority for making the determination about restored or continued Medicaid eligibility remains with the States, so this change in the law also does not affect these final rules.

#### **Actions Since We Published the Interim Final Rules**

Many of the public comments, most of which were submitted during the first half of 1997, expressed concerns about how we would conduct the required redeterminations of the eligibility of children who qualified under the old disability standard. Many commenters expressed concerns that the law required us to do the redeterminations too quickly and that the new rules were unfamiliar to our adjudicators. Some commenters were concerned that we would not get proper evidence. They were especially concerned that we would not get sufficient evidence from schools because we would conduct many redeterminations in the summer. We also received allegations that the

State agencies were purchasing substandard consultative examinations and using them to cease children's eligibility.

Some commenters expressed concern that children and their families would not understand that they could appeal determinations that they were no longer eligible and that they could continue to receive benefits while appealing. Some were concerned about how the redeterminations and loss of benefits would affect children and their families in the future.

In response to these and other concerns, Commissioner Kenneth Apfel promised, during his confirmation hearings before the Senate Finance Committee in 1997, to perform a "top-to-bottom" review of how we implemented the changes made to the SSI childhood disability program that were required by Pub. L. 104–193. He ordered this review as his first official act after being confirmed as Commissioner, and we issued a report, *Review of SSA's Implementation of New SSI Childhood Disability Legislation*, on December 17, 1997. (Pub. No. 64–070. The report is also available at our public Internet site: [www.ssa.gov/policy/child.htm](http://www.ssa.gov/policy/child.htm).)

The report showed that, overall, the vast majority of the redeterminations were handled properly. The review indicated that SSA and the State agencies making disability determinations for us had done a good job of implementing the new provisions, but found some inconsistencies in the application of the rules and in compliance with our instructions. Commissioner Apfel immediately ordered several corrective actions to address these issues.

In the report, we identified three specific areas of concern, and the corrective actions we would take above and beyond our normal actions:

##### *1. Children Classified in Our Records as Having Mental Retardation*

Of the approximately one million children on the SSI rolls in December 1996, 407,000 were shown on our records with our diagnosis code for mental retardation. Eighty percent of these children were not subject to redetermination under Pub. L. 104–193. However, at the time of the report, we had found ineligible under the new law slightly more than half of the approximately 79,500 children whose eligibility we reviewed and who were coded in our computer records as having mental retardation. Our review concluded that part of this could be attributed to the fact that, historically, some children were coded using the

diagnosis code for mental retardation incorrectly or because we did not have a diagnosis code for the child's impairment. Over half of the cases in which benefits had been ceased involved children who were not diagnosed with mental retardation at the time of the cessation. Of these cases, almost 40 percent involved a learning disability and others involved borderline intellectual functioning. Thus, in a large number of cases with the diagnosis code for mental retardation, the children did not have mental retardation, were never thought to have mental retardation, but were shown in our records with that diagnosis code.

However, our review also showed concerns about the accuracy of these redeterminations, especially for children with IQs in the range of 60 to 70 and slightly above 70. The concerns included whether listings were misapplied and whether children with mental retardation who had IQ scores above 70 incorrectly lost eligibility.

To address the concerns, we reviewed the cases of all children who had a diagnosis code for mental retardation if we had found they were ineligible after a redetermination or if we had denied their initial applications on or after August 22, 1996. We automatically reopened and issued new determinations in the cases of all children who were coded as having mental retardation and who had an IQ score of 75 or below. We also provided additional training to all of our adjudicators on how to evaluate claims involving children with mental retardation under the new rules, before they reviewed the cases again.

## 2. Quality of Case Processing

We found that the concerns about sufficient case development were unfounded, especially the concerns that we would not get school records we needed and that our consultative examinations were inadequate. However, we did find some issues related to the quality of case processing.

In some States, we found problems in cases that were ceased based on a "failure to cooperate." Our procedures require additional attempts to contact a child's parent or legal guardian when this individual does not respond to official notices regarding the child's eligibility. Our procedures also require us to make special efforts to identify and contact another adult or agency responsible for the child's care. We also require written documentation of those attempts. We determined that in some cases all required contacts were not attempted or they were not documented

in the case file. Therefore, we reviewed all "failure to cooperate" cessations to ensure that proper procedures were followed. When those reviews indicated deficiencies, we gave families another opportunity to cooperate and to have their benefits reinstated during the new redetermination process, including any benefits that would have been paid since the month when payments ceased. We also provided additional written instructions and training on this issue to our personnel.

We also found that, although the accuracy of the redeterminations was above the regulatory threshold for accuracy nationally, it varied by State and by type of impairment, particularly for certain mental disorders other than mental retardation. Therefore, we instructed all of our State agencies to review a portion of the cases they had ceased on redetermination. Depending on the quality assurance results in each State, we identified cases involving both physical and mental impairments (other than mental retardation) for review based on the cases that had the greatest likelihood of error within a given State. When we found deficiencies in a redetermination, the case was reopened, developed if necessary, and the determination revised if appropriate.

Before these reviews began, we provided additional training to all our adjudicators on how to evaluate mental impairments other than mental retardation and on the evaluation of speech disorders in combination with cognitive limitations. We also issued Social Security Ruling (SSR) 98-1p, on the evaluation of speech disorders in combination with cognitive limitations. (63 FR 15248 (1998))

## 3. Appeals and Requests for Benefit Continuation During Appeal

When we notified families (or other payees) that a redetermination found that a child no longer qualified, the notice also advised them of their legal rights. This information included:

- How to ask for a reconsideration,
- How to request continuation of benefit payments while appealing, and
- How to obtain legal assistance to appeal.

Concerns were raised that the cessation notice was hard to understand. We also received reports that some families were discouraged from filing appeals or were not told about free legal services. We received reports that some families were discouraged from asking for benefit continuation during their appeals, especially because the overpayment waiver process was not fully explained to them. Some families did not

understand that they might not have to pay back the benefits they received during the appeal if the appeal decision was still unfavorable.

We made changes to clarify our procedures and provided training as the redeterminations proceeded. However, we found that these actions helped only those children whose cases were redetermined later in the process and that some individuals who did not appeal—and some who appealed, but did not request benefit continuation—did not understand their rights.

To address this concern, on February 18, 1998, we sent a new notice using simpler language to families (or other payees) of all children who lost their SSI eligibility under the new childhood disability rules and did not appeal. The notice gave them another chance to appeal and to ask for benefit continuation during the appeal. We also sent a new, simpler notice to families (or other payees) of all children who had appealed their initial redeterminations but who did not request benefit continuation during the appeals. The notice gave them another chance to request benefit continuation during the appeal. Both notices included information on the right to request waiver of any overpayment that might result from continuing benefits during appeal and on how to get free legal assistance.

On March 18, 1998, we also sent new, simpler notices to individuals who had attained age 18 and who lost their eligibility because of the changes in Pub. L. 104-193. We sent these notices to individuals who did not appeal or who appealed but did not request benefit continuation during their appeal.

We also took several other actions. For example, we provided a "script" for employees in our Field Offices and Teleservice Centers to follow when informing claimants of their appeal and benefit continuation rights. The script ensured that all families received the same information. We also made concerted efforts to ensure that families knew about available legal assistance by providing toll-free numbers for the American Bar Association's (ABA's) Children's SSI Project referral service in our Field Offices, Teleservice Centers, and on our Internet site. We also included the ABA's toll-free numbers for legal assistance on our notices for States in which toll-free numbers were available.

In addition to the corrective actions outlined above, we have taken many other actions. For example, we continue to monitor case quality through our quality assurance system. We conducted

several training classes in addition to those noted above and trained a “cadre” of specialists in childhood disability who served as experts in their respective regions. We are now studying several issues related to childhood disability, which we describe in the public comments section of this preamble, including the effects on families of the loss of eligibility resulting from Pub. L. 104–193.

These final childhood rules represent another step in our actions to ensure that all children who meet the SSI eligibility requirements receive their benefits. The final rules respond to extensive comments on the interim final rules that we received from a wide range of child-serving professional organizations as well as advocacy, legal, and family groups and individuals. Their comments, together with our experience, input from individual medical and other professionals, and other actions, support the adjustments made in the interim final regulations that we publish today as the final childhood disability regulations.

#### Explanation of the Effective Date

As we noted in the effective date section of this preamble, these final rules will be effective on January 2, 2001. We have delayed the effective date of the rules to give us time to provide training and instructions to all of our adjudicators and to revise Form SSA–538 and other forms and notices before we implement the final rules. The interim final rules will continue to apply until the effective date of these final rules. When the final rules become effective, we will apply them to new applications filed on or after the effective date of the rules. We will also apply them to the entire period at issue for claims that are pending at any stage of our administrative review process, including claims that are pending administrative review after remand from a Federal court.

With respect to claims in which we have made a final decision, and that are pending judicial review in Federal court, we expect that the court’s review of the Commissioner’s final decision would be made in accordance with the rules in effect at the time of the final decision. If the court determines that the Commissioner’s final decision is not supported by substantial evidence, or contains an error of law, we would expect that the court would reverse the final decision, and remand the case for further administrative proceedings pursuant to the fourth sentence of section 205(g) of the Act, except in those few instances where the court determines that it is appropriate to

reverse the final decision and award benefits, without remanding the case for further administrative proceedings. In those cases decided by a court after the effective date of the rules, where the court reverses the Commissioner’s final decision and remands the case for further administrative proceedings, on remand, we will apply the provisions of these final rules to the entire period at issue in the claim.

#### Summary of Final Rules

We are adopting the interim final rules with the changes set out below, and are publishing only those rules that we have changed. For a summary of the rules we are adopting without change, see the 1997 interim final rules (62 FR 6408).

For clarity, we refer to the changes we are making here as “final” rules and to the rules that will be changed by these final rules as the “interim final” rules. We also use the past tense to describe the interim final rules we are changing. However, it must be remembered that these final rules do not go into effect until January 2, 2001. Therefore, the interim final rules will still be in effect until that date.

#### Changes to § 416.902 General Definitions and Terms for This Subpart

We are adding a new definition to this section to help simplify the language of our regulations. We define the term “the listings” to mean the Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter. Throughout these final rules, we use the new term in the phrase “medically or functionally equals the listings” to replace longer phrases that refer to appendix 1 of subpart P of part 404 of this chapter. For example, when we say that we consider whether an impairment(s) medically or functionally “equals the listings” we mean “whether an impairment medically or functionally equals in severity the criteria of a listing in appendix 1 of subpart P of part 404 of this chapter.”

We are making this change because of changes we are making in the functional equivalence provisions of the regulations in response to public comments. As we explain more fully under the explanation of changes to final § 416.926a, we will no longer refer to specific listings when we determine functional equivalence. The change also simplifies the language of our rules and removes some inconsistencies among various rules.

We are also including in our current definition of the words “you” or “your” the words “me,” “my” and “I.” Under the President’s plain language initiative,

we are changing some of our rules to use first-person questions in paragraph and section headings. We used this technique in final § 416.987(c), using a question and the pronoun “my” in the heading, “When will my eligibility be redetermined?” and in final § 416.987(d), using the pronoun “I” in the heading, “Will I be notified?” Therefore, we need to add a definition of these words in § 416.902. In anticipation of similar future changes, we are also indicating that we may use the word “me.” The new terms, which are only editorial, help clarify our rules.

#### Changes to § 416.924 How We Determine Disability for Children

In final § 416.924(c), we are adding language to clarify that at step two of the sequential evaluation process we consider both whether a child has a medically determinable impairment and whether any impairment or combination of impairments the child has is “severe.” In the interim final rules, we did not include the first part of the statement.

The new language only clarifies our rules and helps to make them consistent with changes we made in final §§ 416.924a and 416.926a in response to public comments. It is based on our interpretation of step two of the sequential evaluation processes for both adults and children, as explained in SSR 96–4p. (61 FR 34488 (1996))

In response to public comments that suggested we include more cross-references in our regulations, we changed § 416.924(d)(3) of the interim final rules, to final § 416.924(e), “Other rules.” Section 416.924(d)(3) of the interim final rules provided cross-references to our rules on meeting, medically equaling, and functionally equaling the listings. Final § 416.924(e) now adds cross-references to final §§ 416.924a, 416.924b, and 416.929 in addition to cross-referencing the rules on meeting and medically or functionally equaling the listings. The last of the new cross-references is to our rules for the evaluation of pain and other symptoms.

Because of this change, we redesignated paragraph (e) of the interim final rules, “If you attain age 18 after you file your disability application but before we make a determination or decision,” as paragraph (f). As we explain below in our explanation of the changes in final § 416.924a, we moved the provisions of § 416.924(f) of the interim final rules, “Basic considerations,” to final § 416.924a(a).

We have not changed § 416.924(g) of the interim final rules, “How we will explain our findings.” Therefore, we are

not reprinting it in this **Federal Register** notice. However, by the time these rules become effective, we will issue a revised Form SSA-538, Childhood Disability Evaluation Form, to reflect the changes in these final rules. (See the public comments section of this preamble for more information about Form SSA-538.) We also changed some of the language throughout § 416.924 for consistency; e.g., to refer to impairments that “equal the listings.”

*General Changes in Final §§ 416.924a and 416.924b*

In the final rules, we extensively reorganized and revised the provisions of the interim final rules in §§ 416.924a, “Age as a factor of evaluation in childhood disability,” 416.924b, “Functioning in children,” and 416.924c, “Other factors we will consider,” and some of the provisions of § 416.926a, “Functional equivalence for children.” These changes respond to many of the public comments, many of which affected more than one section of our rules.

We are replacing §§ 416.924a, 416.924b, and 416.924c of the interim final rules with final §§ 416.924a, “Considerations in determining disability for children,” and 416.924b “Age as a factor of evaluation in the sequential evaluation process for children.” For the most part, the final rules include the provisions of the interim final rules. However, in reorganizing the provisions, we found a number of redundancies that we eliminated and text we could combine and shorten. We also simplified much of the language and expanded some of our guidance, as suggested by the commenters. We also deleted some sections that we no longer need because of the revisions.

We made these changes because many public commenters recommended that we provide a better explanation of how our provisions on “other factors” in § 416.924c of the interim final rules apply in evaluating childhood disability. Many commenters urged us to clarify these rules and to provide more guidance about how we apply the factors when we evaluate a child’s functioning. Many commenters also suggested that we include more factors for our adjudicators to consider when they evaluate a child’s functioning. Some commenters urged us to incorporate information from our operating manuals and training, and to give more prominence to these important principles so that they are not overlooked. Others asked us to add cross-references throughout the

childhood disability regulations so that no relevant provisions are overlooked.

In final § 416.924a, we no longer refer to the factors as “other” factors because the comment letters showed that our intent was not clear. Our intent in the interim final rules was only to include guidance about some of the more important factors we consider when we evaluate a child’s functioning to decide whether the child has a “severe” impairment and whether the child’s impairment(s) meets or equals the listings. But our earlier wording led people to believe that we meant to consider the “other factors” separately, after an initial assessment of a child’s functioning, to see whether there are additional limitations the child might have based on the “other factors.” That has never been our intent. Like our consideration of symptoms, the factors in this rule are an integral part of our evaluation of a child’s functioning.

To demonstrate our intent more clearly, and to give the provisions the prominence the public commenters thought was lacking, we moved up the provisions of § 416.924c of the interim final rules. Now, the provisions on factors we consider when we assess functioning are found in final § 416.924a instead of last in the series of childhood regulations beginning with § 416.924.

In the next section of this preamble, we explain the specific changes we made in final §§ 416.924a and 416.924b and our reasons for making them.

*Specific Changes in § 416.924a Considerations in Determining Disability for Children*

Final § 416.924a(a) contains the provisions of §§ 416.924(f), “Basic considerations,” and 416.924c(a), “General,” of the interim final rules. We clarified the language of the interim final rules and removed redundancies. We also added some examples of medical sources to correspond to the existing examples of nonmedical sources, and included more examples of nonmedical sources whom we may ask for information.

The term, “Other medical sources not listed in § 416.913(a),” which now appears in final § 416.924a(a), refers to medical professionals who are not “acceptable medical sources.” It is taken from a revision to § 416.913(d) (formerly § 416.913(e)) we published in the **Federal Register** on June 1, 2000 (65 FR 34950). In those final rules, we also recognize qualified speech-language pathologists and certain other specialists as acceptable medical sources for evidence of impairments that are within their areas of specialty.

In final § 416.924a(a)(1), we also included a cross-reference to our rules in § 416.927, in response to comments that asked us to include more cross-references to provisions our adjudicators must consider before making their determinations or decisions. That section explains how we consider medical source opinion.

We added a new provision about testing in final § 416.924a(a)(1)(ii) to respond to comments recommending that we caution our adjudicators against strict adherence to the numerical scores of IQ tests and other tests. The new provision restates our longstanding policy that we consider all relevant evidence in a child’s case record. Therefore, we do not consider any piece of evidence in isolation, including test scores, and will not rely on test scores alone when we decide if a child is disabled. The provision is also in part a response to comments that recommended revising the rules to include consideration of the standard error of measurement (SEM) that professionals use to estimate a score’s reliability. The provision includes in our rules information we have included in our training since 1997. (We explain more about the SEM in the summary of final § 416.926a and in our responses to the comments.) We also added a cross-reference to § 416.926a(e), which includes several provisions on how we consider test scores, especially in final § 416.926a(e)(4).

The last sentence of final § 416.924a(a)(1)(iii), “Medical sources,” is new in our regulations but reflects our longstanding procedure. It explains that we may consider information provided by a nonmedical source (e.g., a parent or the child) to be a clinical sign, as defined in § 416.928(b), when the medical source has accepted and relied on it to reach a diagnosis. This often occurs for children with mental disorders, when a psychiatrist or psychologist may accept statements made by the child or parents, such as “my child has difficulty sleeping,” as his or her clinical findings. However, it may also occur for children who have other kinds of impairments.

In final § 416.924a(a)(2), “Information from other people,” we expanded the guidance we gave in § 416.924(f) of the interim final rules. We added new guidance about information we will request from early intervention and preschool programs, and provide more guidance about the information we will request from schools.

Final § 416.924a(b), “Factors we consider when we evaluate the effects of your impairment(s) on your functioning,” incorporates the

provisions of §§ 416.924c(b) through (h) of the interim final rules; i.e., what we formerly called the “other factors.” In response to public comments, we expanded the list of factors we will consider and incorporated principles from our training and other instructions we have used since we published the interim final rules in 1997.

In final § 416.924a(b)(1), “General,” we explain that we must consider a child’s functioning when we decide whether the child has a “severe” impairment(s) at step two of the sequential evaluation process and when we consider functional equivalence at step three. We also explain that we will consider a child’s functioning when we decide whether his or her impairment(s) meets or medically equals the requirements of a listing if the listing we are considering includes functioning among its criteria.

In final § 416.924a(b)(2), “Factors we consider when we evaluate your functioning,” we explain that we will consider any factors that are relevant to how the child functions when we evaluate his or her impairment or combination of impairments. In response to many commenters who thought we should include a reference to pain and other symptoms in this section, we added an example of symptoms and provided a cross-reference to our rules on evaluating symptoms in § 416.929. We also clarified that the factors we list in the remainder of the section are only “some” of the factors we may consider.

Final § 416.924a(b)(3), “How your functioning compares to the functioning of children your age who do not have impairments,” is new in this section, although it reflects our longstanding policy. It explains that when we consider whether a child has functional limitations because of his or her impairment(s), we will consider the child’s functioning in age-appropriate terms; i.e., in relation to other children of the same age who do not have impairments.

In final § 416.924a(b)(3)(ii), we added a corollary to this principle. When we consider evidence that formally or informally rates a child’s functioning, we will consider the standards used by the person who did the rating and the characteristics of the group to whom the child was compared. We include the familiar example from our training and instructions that a child in a special education class who is compared to other children in the class is not being compared to children of the same age who do not have impairments.

Final § 416.924a(b)(4) is also new. It specifies in the context of our childhood

disability rules our longstanding policy that, when a child has more than one impairment (i.e., multiple impairments), we consider the combined effects of the impairments. We have had a rule on this issue (§ 416.923) for many years, and specific provisions in the interim final rules that addressed the point (e.g., §§ 416.924(a), 416.924(c), 416.924b(a), and 416.926a(a)). The new provision is one of our responses to those comments that asked us to explain better how we consider “multiple” impairments. This provision is intended to recognize that limitations resulting from a combination of impairments may be greater than the limitations that we might expect to find if we looked separately at each impairment; i.e., the impairments may have interactive and cumulative effects. We also use the word “comprehensively” to emphasize that we look at all of these effects when we evaluate the child’s functioning.

However, we also explain in the first sentence that we do not always need to look at the combined effects of a child’s multiple impairments. Sometimes we can decide that any single impairment is “severe” or that one of a child’s impairments meets, medically equals, or functionally equals the listings without considering the child’s other impairments.

Final § 416.924a(b)(5), “How well you can initiate, sustain, and complete your activities, including the amount of help or adaptations you need and the effects of structured or supportive settings,” incorporates provisions from several interim final rules and includes new provisions that respond to public comments. Final § 416.924a(b)(5)(i), “Initiating, sustaining, and completing activities,” incorporates principles from the “Concentration, persistence or pace” area of functioning in § 416.926a of the interim final rules. The principle that a child should be able to initiate, sustain, and complete activities independently and at the same rate as other children his or her age who do not have impairments is inherent in all evaluations of functioning.

We clarify this principle further in final § 416.924a(b)(5)(ii), “Extra help,” which expands on the guidance we provided in the last sentence of § 416.926a(c)(2) of the interim final rules. We incorporated this guidance in final § 416.924a because it is appropriate whenever we must evaluate a child’s functioning, not just at the functional equivalence step.

In the final provision, we explain that an important indication of the severity of a child’s impairment(s) and its resulting limitations is the amount of effort that must be made to help the

child function. By “help,” we mean not only help from parents, medical providers, school personnel, or other people, but also the “help” a child may get from special equipment, devices, or medications in order to complete his or her tasks. We may decide that a child has limitations compared to other children the same age who do not have impairments because of extraordinary efforts that must be made for the child to function as well as he or she does.

Final § 416.924a(5)(iii), “Adaptations,” incorporates the provisions of § 416.924c(e) of the interim final rules. We clarified some of the earlier language and reinforced the requirement that we compare a child’s functioning to the typical functioning of children the same age who do not have impairments.

We also deleted two examples. We deleted the word “appliances” from the previous second sentence because it is included in the concept of “assistive devices” that appears in the same sentence. We also deleted the “hearing aids” example from the third sentence. Hearing aids are not a good example of an adaptation that may allow a child to function normally because they do not restore normal hearing the way eyeglasses may restore essentially normal vision.

Final § 416.924a(b)(3)(iv), “Structured or supportive settings,” corresponds to § 416.924c(d) of the interim final rules, “Effects of structured or highly supportive settings.” We deleted the word “highly” because we are clarifying that we consider how a child functions in all settings compared to the typical functioning of same-age children who do not have impairments. The basic principles that apply to the evaluation of functioning in “highly” supportive settings also apply to the evaluation of a child’s functioning in other supportive settings.

We also made a number of editorial changes for clarity, added several examples, and expanded some statements from the interim final rules to better explain our intent.

Final § 416.924a(b)(6), “Unusual settings,” is new. It includes in our rules our longstanding policy that a child’s functioning in an unusual situation, such as a consultative examination or a one-to-one setting, may not be typical of his or her functioning in routine settings on a day-to-day basis. It is another example of our policy that we do not consider any single piece of evidence in isolation from the other relevant evidence in the case record.

We added this section because some commenters noted correctly that there are medical impairments (such as

attention deficit hyperactivity disorder) that may not be as manifest in unusual settings as they are in typical settings, such as at home and in school. A child with such an impairment may appear to be relatively normal in an unusual setting but be very limited in others. Other impairments can be more or less severe at any given point in time, so that a child may appear more or less limited on any single examination or in any one-to-one or other unusual setting. We included this principle in our training after we implemented the interim final rules, so the new provision only reflects our existing policy.

Final § 416.924a(b)(7), “Early intervention and school programs,” incorporates, expands, and clarifies provisions of § 416.924c(g) of the interim final rules. To respond to comments requesting more explanation of how other factors apply when we evaluate a child’s limitations, we added more discussion about how we consider evidence from early intervention services, preschools, and schools. We also provide specific guidance about how we use school records (subparagraph (ii) of the final rule) and how we consider assessments from early intervention services or special education programs or accommodations in school (subparagraphs (iii) and (iv) of the final rule).

We also made clear in this section, and throughout the rules, that “school” includes preschool. We also explain better (in subparagraph (v) of the final rule) how the impact of chronic or episodic impairments or a child’s need for therapy or treatment may interfere with his or her ability to participate in school activities.

Final § 416.924a(b)(8), “The impact of chronic illness and limitations that interfere with your activities over time,” incorporates the relevant provisions of § 416.924c(b), “Chronic illness,” from the interim final rules. Much of interim final § 416.924c(b) addressed the effects of treatment as it related to chronic illness and was not specifically relevant to this heading. Therefore, we moved those provisions into the section on treatment, final § 416.924a(b)(9). In response to a comment, we also added new second and third sentences in the paragraph to explain better the importance of considering functioning over time when a child has a chronic impairment that is characterized by episodes of exacerbation (worsening) and remission (improvement). For these new sentences, we adopted language we use in the third paragraph of section 12.00D of the adult mental disorders listings. This principle is equally

applicable to children and adults, and to both physical and mental impairments.

Final § 416.924a(b)(9), “The effects of treatment (including medications and other treatment),” incorporates the provisions of paragraphs (c) (“Effects of medication”), (f) (“Time spent in therapy”), and (h) (“Treatment and intervention, in general”) of § 416.924c of the interim final rules. We expanded the list of factors we will consider when we evaluate the effects of a child’s medications. We deleted the reference to “marked and severe functional limitations” that was in the third sentence of interim final § 416.924c(c) to clarify that the factors in § 416.924a apply when we evaluate a child’s functioning beginning at step two of the sequential evaluation process. We also clarified language and added examples and new language reinforcing some of the principles discussed above.

#### *Specific Changes in Final § 416.924b Age as a Factor of Evaluation in the Sequential Evaluation Process for Children*

As already noted, we redesignated § 416.924a from the interim final rules as final § 416.924b. We revised the heading of the section to make clearer that it addresses the consideration of age at steps two and three of the sequential evaluation process for children.

Except for editorial changes and one addition, final § 416.924b(a), “General,” is the same as § 416.924a(a) of the interim final rules. We expanded the provision on children who may be too young to be tested, now in final § 416.924b(a)(4), with language we adopted from section 114.00D4 of the listings. The new language explains that we will consider all relevant information in the child’s case record, including “other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice that will help us evaluate the existence and severity” of the child’s impairment(s). This is not a policy change since it only clarifies what we do in all cases, including for infants and toddlers.

Final § 416.924b(b), “Correcting chronological age of premature infants,” is identical to § 416.924a(b) of the interim final rules. For that reason, we are not reprinting it in the **Federal Register**.

We are deleting all of § 416.924a(c) of the interim final rules, primarily because these provisions are better addressed elsewhere in these final rules. For example, the provisions of § 416.924a(c)(1) of the interim final rules, which address how a child adapts to an impairment, are better addressed

by several provisions in final § 416.924a, as already explained above, and § 416.926a. The principles in § 416.924a(c)(3)(ii) of the interim final rules, which explained the interactive and interdependent process of development within a child, are better addressed by final § 416.926a(c), “The interactive and cumulative effects of an impairment or multiple impairments,” and throughout the general and age-specific descriptions of each domain in final § 416.926a. Likewise, using work-related activities to measure functioning in adolescents is now addressed by the age-specific domain descriptors found in § 416.926a.

We deleted some provisions for consistency. The final rules emphasize our longstanding policy that we consider the specific effects of each child’s impairment(s) on his or her functioning based on the evidence in the case record. Some provisions in § 416.924a(c) of the interim final rules, however, provided more general guidance about how impairments might theoretically affect children who were older or younger. We originally included this guidance in our rules in 1991 when we first instituted the functional equivalence and IFA policies because we thought it would help our adjudicators better understand how impairments might affect children at different ages. However, we believe that we no longer need such guidance in our rules and that our focus on the need to assess the specific limitations each child has regardless of age is clearer without it.

#### *Deletion of § 416.924b of the Interim Final Rules*

Because of the changes we made in final §§ 416.924a and 416.924b, and in final § 416.926a, as described below, we deleted all of § 416.924b of the interim final rules, “Functioning in children.” Section 416.924b(a), “General,” merely restated the principle that we consider all of a child’s limitations when we evaluate whether the child has a “severe” impairment and whether the impairment causes “marked and severe functional limitations.” Since we make identical and similar statements repeatedly throughout the final rules, it was unnecessary to retain this statement.

Section 416.924b(b) of the interim final rules, “Terms used to describe functioning,” included definitions of the terms “age-appropriate activities,” “developmental milestones,” “activities of daily living,” and “work-related activities.” However, we used the term “work-related activities” only in § 416.924a(c)(4) of the interim final

rules. We did not use the other terms at all in the interim final rules, although we used the phrase “age-appropriate” and the word “development” in § 416.926a to describe the method of functional equivalence based on “broad areas of functioning.” We believe the changes we made throughout the final rules to indicate that we consider a child’s functioning in relation to children of “the same age who do not have impairments” adequately cover the idea we intended by the term “age-appropriate activities.” Likewise, final § 416.926a continues to refer to a child’s “development” and incorporates appropriate principles with examples for each age category. As already noted, we also included examples of work and work-related activities in the sections describing the domains for adolescents in final § 416.926a.

#### *Changes to § 416.925 Listing of Impairments in Appendix 1 of Subpart P of Part 404 of This Chapter*

We revised § 416.925(b)(2) of the interim final rules to make it consistent with other changes we made in these final rules, especially changes in final § 416.926a. As we explain below when describing the changes to the functional equivalence rules, we will no longer refer to specific listings when we consider whether an impairment functionally equals the listings. In keeping with this change, we removed the reference to the childhood mental disorders listings in our definition of “listing-level severity” in final §§ 416.925 and 416.926a. We also updated the references to include the new domains described below and provided a better cross-reference to the rules defining the terms “marked” and “extreme.”

#### *Changes to § 416.926a Functional Equivalence for Children*

We received many comments about our functional equivalence rules. Most commenters raised at least one of the following issues:

- Many commenters said that our rules on functional equivalence were too complicated and suggested that we simplify them. Some commenters noted that it was difficult for adjudicators to determine which listings contained “disabling functional limitations.”

- Most commenters focused on the method of functional equivalence that was based on “broad areas of development or functioning,” set out in § 416.926a(c) of the interim final rules. Some of these commenters noted that we did not provide the same number of areas of functioning for all children and thought that this was unfair to children

who had fewer functional areas in which to be rated. These commenters pointed out that for children age 1 to 3 we provided only three areas of functioning, while for older children we provided five.

- Many commenters asked us to separate communication from cognition in the cognitive/communicative area of functioning.

- Many commenters asked us to provide better ways to evaluate physical impairments. Many of these commenters suggested that we include another area of functioning to evaluate physical disorders in addition to the “motor” domain we added in 1997.

- Many commenters also asked us to clarify the rules to explain more clearly how we evaluate combinations of impairments, particular kinds of impairments, and particular kinds of functional limitations.

- A number of commenters asked us to clarify how we consider the results of testing, including the SEM, and how we define the terms “marked” and “extreme.”

For a more detailed summary, see the public comments section of this preamble. As we note there, we adopted or partially adopted these comments in the final rules. In many cases, we incorporated specific suggestions made by commenters.

Final § 416.926a has the following key features:

- *Simplified rules.* Under the interim final rules, we provided four methods for evaluating functional equivalence. (See §§ 416.926a(b)(1)–(b)(4) of the interim final rules.) In the final rules, we are providing a single method, based only on domains of functioning. The methods were somewhat redundant and, by far, the most commonly used one was based on broad areas of development or functioning, which we call “domains” in the final rules. The word “domain” is consistent with the language used in the conference report on the legislation, and much simpler than the phrase we used in the interim final rules, which meant the same thing.

- *Delinking from specific listings.* We also simplified the final rules so that adjudicators will no longer consider or refer to any of the listings when deciding functional equivalence. Although we provided self-contained domain criteria under the “broad areas of development or functioning” method in the interim final rules, we still required reference to listing 112.02 or 112.12 when a child’s impairment(s) functionally equaled the listings under this method. The other three methods of functional equivalence in the interim final rules required adjudicators to

identify specific listings containing disabling functional limitations and to refer to them when they found functional equivalence.

Also, a frequent criticism of the broad areas of functioning was that they were “the same” as the domains in the childhood mental disorders listings because they used the same names. Although this criticism was inaccurate, it is true that the names of the domains in the interim final rules confused many people. The new domains are specifically designed for determining functional equivalence and are completely delinked from the mental disorders and other listings.

- *New domain for evaluating the physical effects of impairments.* We added a sixth domain, called “Health and physical well-being,” for evaluating the physical effects of both physical and mental impairments, except for motor functioning limitations, which will be evaluated in a separate domain (“Moving about and manipulating objects”). This domain includes guidance that was relevant to the prior functional equivalence method called “episodic impairments” (see § 416.926a(b)(3) of the interim final rules) but also includes new guidance in response to public comments.

- *The same number of domains for all children.* All six domains in the final rules apply to children from birth to the attainment of age 18. We agreed with the commenters that it is possible to describe domains that apply to all ages. We provide general descriptions of the domains and specific examples of typical and atypical functioning for each domain. In five of the six domains (all except “Health and physical well-being”), we provide detailed descriptors for each age group.

- *Communication addressed in the appropriate domains.* In the final rules, we no longer have a domain called “cognitive/communicative.” The different aspects of communication are addressed in each domain that they affect.

- *Guidance on evaluating multiple impairments.* We added more guidance and reminders about evaluating the functional limitations that result from combinations of impairments throughout these final rules, including in final § 416.926a. Final § 416.926a(c), “The interactive and cumulative effects of an impairment or multiple impairments,” addresses this issue specifically.

- *Clarification of how we use test results.* We did not adopt the comments that asked us to include specific reference to the SEM in our rules or to apply SEMs in certain ways. However,

in response to these comments, we clarified that we do not rely on any test score alone. We also clarified our longstanding policy that we may consider a child to have "marked" or "extreme" limitations with test scores that are slightly higher than the levels we use to define those terms. However, we explain that we may also consider the converse; *i.e.*, that a child with test scores that appear to be in the "marked" or "extreme" range may not have such limitations. We consider test scores in the context of all the evidence in the case record.

- *Better general guidance for considering all types of impairments.* In final §§ 416.924a and 416.926a, we provide better guidance for evaluating the effects of all impairments, including a number of specific impairments singled out by some commenters. In addition to improvements we made in final §§ 416.924a and 416.926a already noted, we also included more detailed guidance and examples for evaluating limitations in each of the domains. We included examples that we believe will be useful for evaluating both physical and mental impairments.

We continue to define listing-level severity as "marked" limitation in two domains or an extreme limitation in one domain.

Therefore, although we delinked our policy of functional equivalence from reference to specific listings, we continue to use the phrase "functionally equals the listings," to underscore that the impairment(s) must be of listing-level severity.

The following is an explanation of the specific changes we made in final § 416.926a.

We revised § 416.926a(a), "General," to reflect the changes to our functional equivalence policy in these final rules. We deleted the reference to "any listed impairment that includes disabling functional limitations among its criteria" in the first sentence because we no longer refer to specific listings. We deleted the second and third sentences for the same reason. We replaced the discussion with an explanation that an impairment or combination of impairments functionally equals the listings if it is of listing-level severity. We also included the definition of listing-level severity from § 416.925(b)(2) of the interim final rules, revised to reflect other changes; *i.e.*, to show that the impairment(s) must result in marked limitations in two domains or an extreme limitation in one domain.

We expanded the guidance in final paragraph (a) about what we consider when we evaluate a child's functioning. The first sentence of paragraph (a) of the

interim final rules indicated that, when we assess functional limitations, we consider what the child "cannot do" because of his or her impairment(s). In the final rules, we clarify that we consider what the child "cannot do, [has] difficulty doing, need[s] help doing, or [is] restricted from doing" because of his or her impairment(s). This clarifies that we consider all of a child's limitations, even when the child has some ability to do an activity. We also added a reminder that we consider the interactive and cumulative effects of all the child's impairments for which we have evidence and references to other relevant rules we consider, especially those found in final § 416.924a.

We replaced §§ 416.926a(b), "How we determine functional equivalence," and 416.926a(c), "Broad areas of development or functioning," of the interim final rules with a series of new paragraphs. Paragraph (b) of the interim final rules explained the four methods we could use to determine functional equivalence. Since functional equivalence is now simplified into one method, we deleted those provisions of the interim final rules. However, we incorporated some of the principles of these paragraphs into other sections of the final rules, as already noted in the explanation of the changes in final § 416.924a and the summary of the key provisions of final § 416.926a.

We deleted the statement in the last sentence of interim final § 416.926a(b) about when we will complete a form SSA-538. This restatement of our policy in § 416.924(g) was redundant and unnecessary. A greater concern was that it was the only place in our rules where we repeated this requirement. We believe this may have given the mistaken impression that we do not complete the form when we decide whether a child's impairment(s) is severe, meets a listing, or medically equals a listing, as required in § 416.924(g).

In final §§ 416.926a(b), "How we will consider your functioning," we explain that we use the word "activities" to mean everything a child does at home, in childcare, at school, and in the community. In final paragraph (b)(1), we list the new domain headings. They are:

- Acquiring and using information,
- Attending and completing tasks,
- Interacting and relating with others,
- Moving about and manipulating objects,
- Caring for yourself, and
- Health and physical well-being.

As we explain below, the new domain names largely clarify the broad areas of development or functioning we used in

the interim final rules. In most cases, they rename, and to some extent reorganize, the prior areas of functioning, incorporating features of the other methods of functional equivalence we have deleted. They also respond to the major public comments about the domains by applying the same domains to children from birth to age 18, addressing the component parts of communication (explained later in this preamble) in the appropriate domains, providing better ways to evaluate the physical effects of impairments, and clarifying how we evaluate the effects of combinations of impairments and particular impairments.

We believe that the revised domains will be easier for our adjudicators to apply and for the public to understand. We believe that the new approach, together with the changes in final §§ 416.924a, provides a clearer, more comprehensive way to assess the effects of a child's impairment or combination of impairments on his or her functioning.

Final §§ 416.926a(b)(2) and (b)(3) provide guidance and reminders based on key provisions of final §§ 416.924a and 416.926a(a). Paragraph (b)(2) explains that there are six basic questions we will consider when we evaluate a child's functioning under the functional equivalence provisions. The six questions focus on the child's abilities and limitations, where the child has difficulty (*i.e.*, at home, in childcare, at school, or in the community), the quality of any limitations (*i.e.*, difficulty initiating, sustaining, or completing activities), and the kind, extent, and frequency of help the child needs. Final paragraph (b)(3) is based on § 416.926a(c)(2) of the interim final rules. It provides reminders of the kinds of evidence we will consider when we evaluate functioning under this section. In response to a public comment, we added cross-references to our rules on evidence and purchasing consultative examinations.

Final § 416.926a(c), "The interactive and cumulative effects of an impairment or multiple impairments," is based on and clarifies our intent in §§ 416.924a(c) and 416.926a(c)(1) of the interim final rules. We included this paragraph in response to comments suggesting that we provide better guidance about these issues and that we simplify our functional equivalence policy.

The provisions of the paragraph are based on our longstanding policy that we consider the limitations that result from a single impairment or a combination of impairments in any domains that are affected. The interim

final rules recognized that these effects may be in areas that “may not be obviously relevant,” and provided (in § 416.924a(c)(3)(ii)) examples of young children who might have delays in developing motor skills or bonding emotionally because of visual or hearing impairments. We decided to delete the examples because they focused only on the youngest children and certain kinds of impairments. We also believed that the provision was misplaced with the rules on how we consider age because it provided guidance on how we consider functioning. Therefore, it was more appropriate to include this guidance in final §§ 416.924a and 416.926a.

Final paragraph (c) assumes that at this step in the sequential evaluation process for children we have already established the existence of at least one medically determinable impairment that is “severe.” Therefore, we explain that at this point we are looking primarily at the extent of the limitation of the child’s functioning. We look at all of the child’s activities to determine the child’s limitations or restrictions and then decide which domains to use. (Of course, when we decide whether the child’s medically determinable impairment(s) is “severe” we will look comprehensively at the combined effects of all of the child’s impairments, unless we are able to decide the issue by looking at each of the child’s impairments separately. We explain this point above and in § 416.924a(b)(4) of the final rules.)

We evaluate the limitations that result from a medically determinable impairment(s) in any single domain or in as many domains as are affected. We explain that any given activity may involve the integrated use of many abilities and skills. We also explain that any single impairment may have effects in more than one domain.

In final § 416.926a(d), “How we will decide that your impairment(s) functionally equals the listings,” we provide the basic rule for functional equivalence. To functionally equal the listings, an impairment or combination of impairments must be of “listing-level severity”; *i.e.*, it must result in marked limitations in two domains of functioning or extreme limitation in one domain. The disability must also meet the duration requirement; *i.e.*, it must have lasted or be expected to last for 12 months or to result in death. The provision is based on “listing-level severity” and the provisions of §§ 416.902, 416.925(b), and 416.926a(c) of the interim final rules. However, in the third sentence of this paragraph, we provide explicitly that we will not

compare a child’s functioning to the requirements of any specific listing to underscore that we are delinking the policy from direct reference to the listings.

Final § 416.926a(e), “How we define ‘marked’ and ‘extreme’ limitations,” is based on § 416.926a(c)(3) of the interim final rules. We reorganized and clarified the provisions from the interim final rules and expanded some of our guidance.

We begin with a general paragraph that reviews the major principles of all of the final rules. In subparagraph (ii), we repeat and expand our guidance about formal testing that appears in final § 416.924a(a)(1), which was based on § 416.924(f) of the interim final rules. The final provision explains that standard scores, such as percentiles, can be converted to standard deviations, and that we consider such scores with all the other evidence when we determine whether a child has a marked or extreme limitation in a domain.

In final § 416.926a(e)(2), “Marked limitation,” we reorganized the provisions of § 416.926a(c)(3)(i) from the interim final rules to provide the general definition of “marked” first. We explain that a child has a “marked” limitation in a domain when his or her impairment(s) “interferes seriously” with functioning in the domain before we provide the more specific definition based on standardized testing. We expanded the definition to refer to limitations in the ability to independently initiate, sustain, and complete activities to be consistent with our other revisions and to clarify the definition in response to comments. For the same reasons, we also revised the statement that “marked limitation may arise when several activities or functions are limited or even when only one is limited.” The final sentence provides that there may be a marked limitation when a child’s “impairment(s) limits only one activity or when the interactive and cumulative effects of [the] impairment(s) limit several activities.”

In addition to retaining the other definitions of “marked” from the interim final rules, we also added a new one explaining that “marked” is the equivalent of functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean. This includes in our rules a longstanding instruction from the training manual we provided to our adjudicators when the interim final rules were implemented. (Childhood Disability Training, SSA Office of

Disability, Pub. No. 64-075, March 1997.)

In subparagraph (e)(2)(ii), we clarified our rule defining “marked” in terms of a developmental quotient for children who have not attained age 3. We continue to provide that such a child will have a “marked” limitation if he or she is functioning at a level that is more than one-half but not more than two-thirds of his or her chronological age. However, in response to a comment, we clarified that if there are standard scores from standardized testing in the case record, these scores take precedence over the more subjective estimate based on functioning relative to chronological age.

In subparagraph (e)(2)(iii), we retain our rule that a “marked” limitation is shown with a valid score that is two standard deviations below the mean, but less than three standard deviations, on a standardized test. We clarified the provision to indicate that the test must be a “comprehensive standardized test designed to measure ability or functioning in [the] domain” and that the test results and the child’s day-to-day functioning in the domain-related activities must be consistent. This is another example of a clarification we made in response to comments that asked us to explain better how we will consider test scores.

Subparagraph (e)(2)(iv) is new. It provides an alternative definition for the term “marked” as it applies to the sixth domain of functioning, “Health and physical well-being.” As we explain below, this new domain considers the physical effects of both physical and mental impairments. It includes (but is not limited to) such effects as frequent exacerbations and frequent illnesses, and incorporates aspects of the functional equivalence method based on episodic impairments found in § 416.926a(b)(3) of the interim final rules.

The definition in this subparagraph describes the frequency of effects that demonstrate a “marked” limitation in this domain. Under the final rules, a child may have a marked limitation in this domain if he or she has illnesses or exacerbations from his or her impairment(s) that result in significant, documented symptoms or signs occurring on an average of 3 times a year or once every 4 months, each lasting 2 weeks or more. We provide alternative criteria for children who have more frequent, but shorter, episodes or less frequent, but longer, episodes.

We adopted this definition from other rules and guidance. We provide a similar criterion in section 14.00D8 in

the Immune System section of part A of our listings, which we use when we decide whether an individual meets the criteria of listing 14.08N. An individual who has HIV infection meets that listing with "repeated" manifestations of the illness as defined in 14.00D8 and "marked" limitations in one other specified domain. We also have operating instructions that we use to evaluate the frequency of exacerbations of serious mental disorders in adults under the fourth paragraph B criterion for most listings under section 12.00. It provides essentially the same criteria for assessing frequency in that domain as used here in the final childhood disability rules. (See Program Operations Manual System, DI 22511.005D.)

In both cases, the frequency criterion is the equivalent of one "marked" limitation, and individuals must still show "marked" limitation in a second domain to meet the listings. We believe the standard is appropriate for evaluating the frequency of exacerbations or illnesses in children too. The other definitions of the term "marked" in these final rules will also apply to the health and physical well-being domain when appropriate.

In final paragraph (e)(3), "Extreme limitation," we made revisions to parallel the revisions in paragraph e)(2). To maintain consistency with the provision that describes a "marked" limitation when an impairment(s) "seriously" interferes with functioning in the domain, we added a parallel definition for extreme limitation when an impairment(s) "very seriously" interferes with functioning.

We also clarified the definition based on a public comment. In § 416.926a(c)(3)(ii)(C) of the interim final rules, we defined "extreme" as having "no meaningful function in a given area." A commenter thought that this was a stricter standard than we intended, equivalent to a requirement that a child be completely unable to function. To clarify that this was not our intent, we deleted the phrase and added in the final rule that, while "extreme" is the rating we use for the worst limitations, it does not necessarily mean a total lack or loss of ability to function. It means that the impairment very seriously limits functioning, and is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least three standard deviations below the mean.

For the domain of "Health and physical well-being," we provide that episodes of illness or exacerbations of a child's impairment(s) "substantially in excess of" the criteria in paragraph

(e)(2)(iv) will also constitute "extreme" limitation. However, we caution that impairments that occur with such frequency or for such extended periods of time that they could be rated as "extreme" under this definition should meet or medically equal a listing in most cases.

In final paragraph (e)(4), "How we will consider your test scores," we expand on the guidance we provided in final § 416.924a(a)(1), focusing more on issues relating to the rating of the domains for functional equivalence. We added the paragraph in response to comments that suggested we include provisions specifying how we would apply the SEM. The paragraph explains that we may find that a child has a "marked" or "extreme" limitation with a test score that is slightly higher than the levels provided in this section if other information in the case record indicates that the child's functioning is seriously or very seriously limited because of his or her impairment(s). This means that we may find that a child has "marked" or "extreme" limitation in a domain even if he or she has test scores that are slightly higher than is required to satisfy the definitions of those terms based on standard deviations. Conversely, we explain that we may find that a child does not have a "marked" or "extreme" limitation even if the test scores are at the levels provided in this section if other information in the case record indicates that the child's functioning is not seriously or very seriously limited. We provide examples to illustrate both situations.

We also incorporate in the final rules guidance from our adjudicator training on how to consider IQ testing (Childhood Disability Evaluation Issues, SSA Office of Disability Pub. No. 64-076, March, 1998). This guidance applies to all testing, and explains how we resolve material inconsistencies between a child's test scores and the other information in the case record. We explain that, while it is our responsibility to resolve any material inconsistencies, the interpretation of a test is primarily the responsibility of the professional who administered the test. If necessary, we may recontact the individual who administered the test for further clarification.

However, we may also resolve an inconsistency with other information in the case record, by questioning other individuals who can provide us with information about a child's day-to-day functioning, or by purchasing a consultative examination. We also explain what we will do when we do not rely on a test score.

We believe these final provisions address most of the concerns of the commenters who asked us to include provisions recognizing the SEM. All measures of functioning are less than perfectly precise and have some range of error around their scores.

The SEM is one method of quantifying this variation. It is a statistical unit that can be used to construct a confidence interval. This interval reflects the reliance that can be placed in the accuracy of an obtained test value. For clinical purposes, the SEM is considered to fall symmetrically around a test score. Therefore, the confidence interval is described by the obtained score plus and minus the desired number of SEMs.

For example, given an obtained score of 72 and a hypothetical SEM of 5 points, one can say with 68 percent confidence that the examinee's true score falls somewhere within the range of 67 to 77. To be 95 percent confident, we must go to plus and minus two SEMs, or a score range of 62 to 82.

SEMs differ from test to test, summary score by summary score (e.g., full scale IQ, verbal IQ, and performance IQ), and by age. Tables of SEMs are typically published within test manuals.

Because of the imprecision inherent in all psychometric devices, professionals who administer tests do not rely on the test scores alone. They consider as much other information as is available to help them judge whether a given test score is a meaningful measurement of a child's ability (or in some tests, the child's functioning) in the area addressed by the test.

For example, the major professional manuals defining mental retardation provide a rough clinical rule of thumb that IQs in the range of 50 to 75 indicate one level of mental retardation, but caution that the child's adaptive functioning must also be considered and must be consistent with the abilities suggested by such scores before a diagnosis of mental retardation may be made. Of course, the professional who administered the test is in the best position to determine the precision of his or her findings.

We believe that the final rules are the best possible way to recognize the less than perfect precision of test results. They recognize that we cannot rely on any given test score without considering it in the context of all the other evidence. They explain that we will generally defer to the judgment of the person who gave the test about the accuracy of the results, and they incorporate into our rules procedures for adjudicators to follow when they question test results.

In final § 416.926a(f), “How we will use the domains to help us evaluate your functioning,” we provide general information about the domains and how we will use them. Each domain description in final paragraphs (g) through (l) begins with a general description of the kinds of activities that should be evaluated under the domain in terms of what a child of the same age who does not have impairments is expected to be able to do.

Then, each domain description (except “Health and physical well-being,” which contains examples only of limitations) includes two kinds of examples: ones to illustrate typical functioning of children who do not have impairments, generally presented by age category, and ones to illustrate limitations. The examples are not all-inclusive, and we will not require our adjudicators to develop evidence about each specific example. They are intended only to help our adjudicators understand better some of the kinds of activities and limitations they should evaluate within each domain when this information is in the case record.

We also explain that the limitations do not necessarily describe “marked” or “extreme” limitations, only limitations of functioning within the domain. We must consider all of the information in the case record when we decide whether there is a “marked” or “extreme” limitation in a domain.

Final § 416.926a(g), “Acquiring and using information,” is, in part, the successor to the prior area of functioning called cognition/communication. In response to public comments about including communication in that area, these final rules recognize that “communication” comprises speech and language, and that language is used both for learning and for interacting and relating. Therefore, we address the three components of communication (speech, language used for learning, and language used for interacting and relating) in the domains that are appropriate to the function.

- Final paragraph (g)(1)(i) recognizes that the ability to acquire information, or learn, requires perceptual, sensorimotor, language, and memory processes that allow the child to acquire the fundamental skills of reading, writing, and doing arithmetic.

- Final paragraph (g)(1)(ii) recognizes that the ability to use information, or think, employs those same processes, through visual and verbal reasoning, to solve problems, make choices, develop ideas, and construct arguments or theories.

- Paragraph (g)(2) provides some examples of activities in “Acquiring and Using Information” typical of children in our designated age groups.

- Paragraph (g)(3) provides examples of some limitations in this domain.

Final § 416.926a(h), “Attending and completing tasks,” incorporates aspects from two prior areas of functioning. It includes some of the former area, “Responsiveness to Stimuli,” which applied only to children from birth to the attainment of age 1, and aspects of the former area, “Concentration, Persistence, or Pace,” which applied only to children from age 3 to the attainment of age 18. As with all of the domains in the final rules, this domain now applies to children of all ages.

The domain recognizes how attention evolves from an infant’s earliest response to all types of environmental stimuli, to a school-age child’s capacity to focus on certain stimuli (and ignore others) in a formal learning situation, and then eventually to an adolescent’s capacity to maintain attention in work or work-like tasks.

- Paragraph (h)(1)(i) describes attention in terms of level of alertness, concentration, and the initiating, sustaining, and changing of focus needed to perform tasks.

- Paragraph (h)(1)(ii) further details the role of attention in physical and mental effort, in allaying impulsive thinking and acting, and in performing tasks at an appropriate pace, within appropriate timeframes.

- Paragraph (h)(2) provides some examples of activities in “Attending and Completing Tasks” typical of children in our designated age groups.

- Paragraph (h)(3) provides examples of some limitations in this domain.

Final § 416.926a(i), “Interacting and relating with others,” includes all aspects of social interaction and relationship with individuals or groups (in formal, informal, or intimate contexts) as well as the speech and language skills needed to communicate effectively in all social settings. This domain incorporates the prior area of “Social Functioning,” but now includes the ability to use speech and the aspect of language needed to interact and relate in social contexts (called “pragmatics”).

- Paragraph (i)(1)(i) discusses interacting with others as the broad set of social behaviors a child uses with any other person, whether in a single encounter or on a daily basis.

- Paragraph (i)(1)(ii) discusses relating to others as the formation of intimate relationships with particular people, which requires interacting skills as well as a wide array of emotional behaviors.

- Paragraph (i)(1)(iii) explains that interacting and relating entail responding to a variety of emotional and behavioral cues, speaking intelligibly, following social rules for conversation and interaction, and responding appropriately to others.

- Paragraph (i)(1)(iv) notes that interacting and relating occur in all of a child’s activities that involve other people and may involve only one person or a group. Interacting and relating also occur across a wide range of social situations, from participating in school activities voluntarily to having appropriate responses to persons in authority.

- Paragraph (i)(2) provides some examples of activities in “Interacting and relating” typical of children in our designated age groups.

- Paragraph (i)(3) provides examples of some limitations in this domain.

Final § 416.926a(j), “Moving about and manipulating objects,” is the successor to the prior area of “Motor Functioning,” and includes gross and fine motor skills.

- Paragraph (j)(1)(i) describes the range of actions involved in moving one’s body from one place to another, such as sitting, standing, balancing, shifting weight, transferring, bending, crouching, crawling, and running.

- Paragraph (j)(1)(ii) describes the kinds of actions involved in moving, holding, carrying, transferring, or manipulating objects.

- Paragraph (j)(1)(iii) discusses the underlying aspects of motor skill, such as coordination, dexterity, integration of sensory input with motor output, and the capacity to plan, remember, and execute controlled motor movements.

- Paragraph (j)(2) provides some examples of activities in “Moving about and manipulating objects” typical of children in our designated age groups.

- Paragraph (j)(3) provides examples of some limitations in this domain.

Final § 416.926a(k), “Caring for yourself,” incorporates and clarifies provisions of the “Personal” area in the interim final rules. It also incorporates principles from the areas in the interim final rules called “Responsiveness to Stimuli” and “Concentration, Persistence, or Pace” that are not covered by the domain for “Attending and completing tasks” in the final rules.

It includes aspects of the child’s ability to appropriately care for physical needs (such as feeding, dressing, toileting, and bathing), maintain a healthy emotional and physical state by coping with stress and changes in his or her environment, and take care of his or her health and safety. Development is measured in terms of such things as the

child's increasing sense of independence and competence, ability to cooperate with others in meeting physical and emotional wants and needs, and increasing independence in making decisions and in taking actions involved in caring for himself or herself. Impaired ability is manifested by such things as pica (eating non-nutritive or inedible objects), self-injurious actions, refusal to take medication, and disturbances in eating and sleeping patterns.

- Paragraph (k)(2) provides some examples of activities in "Caring for yourself" typical of children in our designated age groups.

- Paragraph (k)(3) provides examples of some limitations in this domain.

Final § 416.926a(l), "Health and physical well-being," is a new domain. It incorporates aspects of the two prior methods of determining functional equivalence called "Episodic impairments" and "Limitations related to treatment or medication effects." (See §§ 416.926a(b)(3) and (b)(4) of the interim final rules.)

The domain addresses the cumulative physical effects of physical or mental impairments and the impact of their associated treatments or therapies on a child's functioning. Consistent with the definition of "extreme" in final § 416.926a(e)(3)(iv), it explains that an impairment(s) that causes "extreme" limitation in this domain will generally meet or medically equal a listing.

- Paragraph (l)(1) takes note of the variety of physical effects that a child may experience, such as shortness of breath, reduced stamina, poor growth, or pain.

- Paragraph (l)(2) notes that a child's medications or treatments may have physical effects that limit the performance of activities.

- Paragraph (l)(3) concerns children whose illness may be chronic with stable or episodic symptoms, or who may be medically fragile and need intensive medical care to maintain health.

- Paragraph (l)(4) provides some examples of limitations in health and physical well-being that may affect a child of any age.

We redesignated § 416.926a(d) of the interim final rules, "Examples of impairments that are functionally equivalent in severity to a listed impairment," as final § 416.926a(m). We revised the heading and the opening paragraph to refer to impairments that "functionally equal the listings" consistent with other changes throughout these final rules.

We also deleted examples 5 and 10 and renumbered the remaining

examples. Example 5 previously referred to any physical impairment(s) or combination of physical and mental impairments "causing marked restriction of age-appropriate personal functioning and marked restriction in motor functioning." The example is no longer appropriate because we replaced the domain names and deleted the term "age-appropriate" from these final rules.

We could have revised the example to reflect the new terms in these final rules, but then it would simply repeat the definition of listing-level severity in final §§ 416.925 and 416.926a(a). We believe the revisions we made throughout final § 416.926a sufficiently clarify the principle that example 5 was intended to show.

Example 10 in the interim final rules referred explicitly to listing 112.12. We deleted this example because we are removing explicit reference to specific listings from our functional equivalence rules.

We also redesignated § 416.926a(e) of the interim final rules, "Responsibility for determining functional equivalence," as final § 416.926a(n). Apart from the redesignation, there are no changes in the rule.

#### *Changes to § 416.987 Disability Redeterminations for Individuals Who Attain Age 18*

The only substantive change we made to the interim final rule is to incorporate the amendment to section 1614(a)(3)(H)(iii) of the Act made by section 5522(a)(1) of Pub. L. 105-33, 111 Stat. 251, 622. Under that section, we must perform a redetermination of the disability eligibility of children who attain age 18 "either during the 1-year period beginning on the individual's 18th birthday or, in lieu of a continuing disability review, whenever the Commissioner determines that an individual's case is subject to a redetermination under this clause." The new provision is found in final § 416.987(c).

We also revised and shortened the entire section to remove redundancies and make it easier to read. These changes are only editorial and do not substantively change any provisions of the interim final rule.

#### *Changes to § 416.990 When and How Often We Will Conduct a Continuing Disability Review*

We revised § 416.990(b)(11) of the interim final rules to incorporate the amendment to section 1614(a)(3)(H)(iv) of the Act made by section 5522(a)(2)(B) of Pub. L. 105-33, 111 Stat. 251, 622. The section explains when we will do a continuing disability review (CDR) of

the eligibility of a child whose low birth weight was a contributing factor material to our determination that he or she was disabled.

The original provision in Pub. L. 104-193 required us to do a CDR by the child's first birthday in all cases. The amendment in Pub. L. 105-33 changed the provision. Now we can do a CDR after a child's first birthday if at the time of the initial determination we determine that the child's impairment is not expected to improve by age 1 and we schedule a CDR for a date after the child's first birthday.

#### *Changes to § 416.994a How We Will Determine Whether Your Disability Continues or Ends, and Whether You Are and Have Been Receiving Treatment That Is Medically Necessary and Available, Disabled Children*

In final § 416.994a(i)(1)(ii), we deleted the word "Psychiatric" in response to a comment that pointed out that "Medical management" in § 416.994a(i)(1)(i) includes medical management provided by psychiatrists. We also corrected typographical errors and changed the text so it is consistent with the final rules on functional equivalence. Otherwise, the section is unchanged.

#### *Other Changes*

We made other changes throughout the rules for consistency with changes we have described above, to correct typographical errors, and to simplify language. For example:

- In the listings sections revised in the interim final rules, we changed the phrase "medically or functionally equivalent in severity to the criteria of a listed impairment" and variations on this phrase to "medically or functionally equals the listings."

- In §§ 416.913(c)(3) and 416.919n(c)(6), we changed the names of the domains to reflect the changes in final § 416.926a.

#### **Public Comments**

In response to our request for comments on the interim final rules, we received 174 letters from different sources. Most of the comments came from advocacy and legal groups that represent children with disabilities. Other comments came from organizations representing children with specific diseases, disorders, or health problems, and from representatives of professional medical and health care organizations. We also received comments from several public agencies and professional organizations having an interest in these rules. Finally, some commenters were parents

or caregivers of children with disabilities.

In a number of cases, we received the same comment and recommendation from several, and sometimes many, commenters. When this happened, the comments and recommendations often used identical or very similar language. Several commenters also included statements in their letters indicating that, in addition to their individual comments, they agreed with the more detailed, comprehensive comments of another commenter, generally an advocacy group or coalition of advocates.

Because many of the comments were detailed, we condensed, summarized, or paraphrased them. However, we tried to summarize the commenters' views accurately and to respond to all of the significant issues raised by the commenters that were within the scope of the interim final rules.

Finally, many of the comments were outside the scope of the interim final rules. For example, some comments asked us to change rules that were not included in the interim final rules, and many comments contained opinions about Pub. L. 104-193 without suggesting changes to the interim final rules. In a few cases, we summarized and responded to such comments because they raised public concerns that we thought are important to address in this preamble. For example, we received many comments from people who were concerned about how we were going to redetermine the eligibility of children under the requirements of Pub. L. 104-193 and we thought it was important to explain what we did after the comments were submitted. In most cases, however, we did not summarize or respond to comments that were outside the scope of our rulemaking. We will retain the comments and consider them if and when they are appropriate for other rulemaking actions.

### Specific Comments

#### *Appendix 1 to Subpart P of Part 404—Listings Sections 112.00C and 112.02B2*

*Comment:* A few commenters expressed concerns about the removal of references to behavior from sections 112.00C2 and 112.02B2c(2). One thought that this change appeared to target children with “invisible disorders,” including attention deficit hyperactivity. Another asked us to instruct adjudicators not to evaluate lightly children with maladaptive behaviors, because these behaviors may indicate the presence of a serious mental impairment. Another commenter stated that the interim final rules did

not adequately capture the behavioral expression of mental illness, especially in young children who do not have fully developed language skills.

*Response:* We removed references to “behavior” and “maladaptive” behavior from the personal/behavioral domain of prior sections 112.00C2 and 112.02B2c(2) in accordance with the explicit requirements of the law, not because we wanted to “target” children with specific impairments. See section 211(b)(1) of Pub. L. 104-193, 110 Stat. 2105, 2189. The interim final rules made no changes to listing 112.11, our listing for evaluating claims filed on behalf of children who have attention deficit hyperactivity disorder, and children with this impairment can still meet or medically or functionally equal the requirements of the listings.

We agree with the commenter who thought that children whose mental impairments result in behavioral problems should have their claims carefully reviewed. In fact, since we published the interim final rules, we have taken a number of actions to ensure that all children, including those with mental impairments, have their claims evaluated correctly and in accordance with the law.

We conducted training for all our adjudicators in 1997, shortly after we published the interim final rules, and emphasized the evaluation of all aspects of childhood disability claims, including those involving behavioral issues. As we noted earlier in this preamble, in late 1997, we also conducted a “top-to-bottom” review of our implementation of the provisions of Pub. L. 104-193 that affected the SSI childhood disability program.

In the review, we found that about 95,000 children, or about 10 percent of the children receiving SSI in December 1996, had an impairment that likely involved maladaptive behaviors in the prior personal/behavioral area of functioning. Of these cases, about 16,500 children were not affected by the changes in the law because their impairments met or equaled the requirements of our listings without consideration of the prior personal/behavioral domain. Two-thirds of the remaining cases involving maladaptive behaviors required a redetermination because they qualified for benefits based on an IFA.

The “top-to-bottom” review, however, indicated that some redetermination cases where benefits ceased were not consistently processed, including some that involved mental impairments other than mental retardation. Consequently, we conducted additional training on these issues in the spring of 1998, and

required the State agencies to review a portion of these cases. The March 1998 training included instruction on how to identify behavioral issues and the disorders with which they are likely to be associated, and emphasized that we still consider the functional limitations resulting from a child's behavior in determining whether a child is disabled.

We disagree with the commenter who thought that the interim final rules did not allow us to consider adequately the behavioral aspects of a child's mental impairment(s). The interim final rules never precluded consideration of functional limitations that result from behavioral problems, and our training and policy statements emphasized that fact. In the interim final rules, we clarified the description of the social area of functioning to emphasize that many impairment-related behavioral problems are likely to have their most significant effects on a child's social functioning. To reinforce the point further, we provided additional training to adjudicators that instructed them to consider behavior and outlined the various aspects to evaluate, including its nature, intensity, frequency, and duration. Our training also emphasized that adjudicators need to consider how behavior is affected by interventions.

We believe that the additional clarifications in the final rules, made to respond to these and other comments, further explain the issue. We provide descriptions and examples of functional limitations throughout the domains to make clearer where we consider the functional limitations of children whose physical and mental disorders include behavioral manifestations.

*Comment:* Two commenters expressed concern about the childhood mental disorders listings, stating that they should be adjusted to reflect the diagnostic categories in the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Washington, DC, American Psychiatric Association, 1994 (the DSM-IV). One of these commenters believed that using the DSM-IV categories would address the “vagueness” of some mental disorders listings, especially for children and adolescents with emotional disturbance. The other commenter said that many of the adult and childhood mental disorders listings are out of date, in need of revision, and that we should regularly update them so that the functional equals concept works more equitably.

*Response:* We did not adopt the comments because they were outside the scope of the interim final rules. The changes we made to the listings were only those necessary to implement Pub.

L. 104–193. We do not have the authority to issue final rules that revise the mental disorders listings as extensively as these commenters suggested without first proposing changes through notice-and-comment rulemaking under the Administrative Procedure Act.

We appreciate the comment suggesting that we update both the adult and the childhood mental disorders listings. We are considering such an update and will consider this and the other comments as we prepare any proposed revisions.

#### *Section 416.902 General Definitions and Terms for This Subpart*

*Comment:* Many commenters stated that our interpretation of the phrase “marked and severe functional limitations” in the interim final rules did not properly reflect Congressional intent. These commenters supported their position by citing various portions of the legislative history of Pub. L. 104–193 and prior versions of the legislation that were not enacted into law.

*Response:* We did not adopt these comments. These final rules continue to define the term “marked and severe functional limitations,” when used as a phrase, to mean the standard for disability in the Act for children claiming SSI benefits based on disability. We continue to define this standard in the final rules as being a level of severity that meets, medically equals, or functionally equals the listings.

Before we published the interim final rules in 1997, we carefully considered the statutory language and legislative history of Pub. L. 104–193, and the prior versions of the legislation that were not enacted into law, in order to determine the appropriate level of severity that would result in “marked and severe functional limitations.” We discussed some of the legislative history that influenced our decision on this issue in the preamble to the interim final rules. (62 FR 6408, 6409 (1997))

We have again reviewed the statutory language and legislative history of Pub. L. 104–193 and the prior versions of the legislation that were not enacted into law. We do not believe that the legislative history can fairly be read to preclude us from defining the phrase “marked and severe functional limitations” we did in the interim final rules and now in these final rules. The General Accounting Office reached a similar conclusion in its report to Congress on our development of the interim final rules. (Supplemental Security Income: Review of SSA Regulations Governing Children’s

Eligibility for the Program GAO/HEHS–97–220–R, September 16, 1997.) In that report, the GAO noted that it found the “interim final regulations to be consistent with the law.” GAO also stated: “We believe SSA was well within its authority in establishing the new level of severity, and its rationale for doing so was well supported.”

Some commenters supported their position by noting that the Senate “rejected” a disability standard contained in a prior House of Representatives’ version of the legislation. This earlier version would have explicitly required a child to meet or equal the requirements of the listings as they existed as of April 1, 1995, in order to be found disabled. These commenters were referring to an early version of the legislation, under which “[e]ligibility, as determined by the Commissioner, for cash benefits \* \* \* will be based solely on meeting or equalling [sic] the current Listings of Impairments [sic] set forth in the Code of Federal Regulations.” H.R. Rep. No. 81 (Pt. 1), 104th Cong., 1st Sess. 48 (1995). Although the House of Representatives passed this bill, the childhood disability standard contained in the bill was just one of several alternative standards that Congress considered in various bills.

For example, the childhood disability standard contained in another bill would have eliminated the IFA, and would have provided that a child would be considered disabled if his or her impairment met the requirements of the listings or a functional equivalence standard separate from the listings. Another bill would have retained the IFA, but required changes to the regulations to provide that a child would be considered disabled if he or she had two marked limitations, or a “severe” limitation in one domain.

Still another bill would have retained the comparable severity standard, but clarified it to mean an impairment that was severe and persistent and which substantially limited a child’s ability to develop or function. Under this proposed standard, “IFA-level severity” was two marked limitations, or one marked and one moderate limitation.

The Senate’s initial version of H.R. 4, the legislation passed by the House, proposed a disability standard under which a child could be found disabled if he or she had “marked, pervasive and severe functional limitations.” S. Rep. No. 96, 104th Cong., 1st Sess., 20 (1995). The Senate later amended its proposal to drop the term “pervasive” from the definition of disability for children, so that the version of the legislation enacted in Pub. L. 104–193 provided

that a child would be found disabled if he or she had an impairment(s) that resulted in “marked and severe functional limitations.”

The evolution of a childhood disability standard from the prior standard of “comparable severity” to one explicitly tied to the Listing of Impairments as it was in effect on April 1, 1995, to one requiring “marked, pervasive and severe functional limitations” to the final standard, requiring “marked and severe functional limitations,” does not represent a fundamental rejection of a standard based on listing-level severity, as some commenters seemed to assume. Rather than rejecting a disability standard based on listing-level severity, the changes made by the Senate to the definition of disability for children can best be viewed as providing a more flexible definition of disability than one explicitly tied to a specific set of regulatory criteria in effect on a specific date, as initially proposed by the House of Representatives.

The legislative history of the initial Senate version of the legislation, under which a child would be found disabled if he or she had “marked, pervasive and severe functional limitations,” indicates that “the Listing and the other disability determination regulations as modified by the Committee bill properly reflect the severity of disability contemplated by the statutory definition.” S. Rep. No. 96, 104th Cong., 1st Sess. 18 (1995). Materially identical language appears in the legislative history of Pub. L. 104–193, as we discussed in the interim final rules and earlier in this preamble.

Thus, we also disagree with commenters who noted that the Senate’s removal of the word “pervasive” from the definition supported the conclusion that the level of severity in the interim final rules was stricter than what Congress intended. As we have noted, the material legislative history concerning the level of severity intended by the respective definitions is substantially identical for each version of the legislation. Cf. S. Rep. No. 96, 104th Cong., 1st Sess. 18–20 (1995) with H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess. 328 (1996), reprinted in 1996 U.S. Code, Cong. and Ad. News 2649, 2716 and H.R. Rep. No. 651, 104th Cong., 2d Sess. 1385 (1996), reprinted in 1996 U.S. Code, Cong. and Ad. News 2183, 2444.

On a related point, the September 14, 1995, colloquy between Senator Dole and Senator Conrad, cited by some commenters to support their position, does not indicate that the Senate deleted the term “pervasive” to reject a standard of disability based on marked limitations in two domains or extreme

limitation in one. Rather, this discussion indicates that there was concern that the inclusion of the term "pervasive" in the earlier definition "implied some degree of impairment in almost all areas of a child's functioning or body systems." Senator Dole noted that this "was not the intent of the earlier proposed change." He further noted that "[s]ometimes children will have multiple impairments, sometimes they will not." 141 Cong. Rec. S13613 (daily ed. September 14, 1995) (statement of Sen. Dole).

Thus, the colloquy indicates that the term was deleted to clarify that a child with severe disabilities could be found disabled even if he or she did not have multiple impairments that caused some degree of impairment in almost all areas of his or her functioning. The interim final and these final rules are consistent with that understanding of the term "marked and severe functional limitations." We will find a child disabled, even if his or her impairment causes limitations in only one area of functioning, as long as the limitations are sufficiently serious.

Although we believe that the level of severity reflected in the interim final and final rules is consistent with the statutory text and legislative history of Pub. L. 104-193, we made a number of changes to improve and clarify them. We discuss these changes elsewhere in this preamble.

*Comment:* Several commenters who objected to a standard of disability based on listing-level severity suggested revisions of the standard to a specified level of severity less than marked limitations in two domains or extreme limitation in one domain. One commenter stated that a standard of disability based on listing-level severity was inappropriate because the listings describe extreme pathology and gross failure of treatment, and, for the most part, do not provide a meaningful level of functional ability.

Commenters proposed a variety of standards for establishing disability, including: Marked limitation in one domain and moderate limitation in another; marked limitation in one domain and moderate limitations in two others; and moderate limitations in three "crucial" areas. Other commenters stated that we should revise the rules to provide that children with moderate limitations in multiple areas should be found disabled, or suggested other alternatives that would have similar results. Other commenters thought we should retain or reinstate the IFA.

*Response:* We did not adopt these comments, but we have made changes in the final rules to address many of the

commenters' concerns. As we explained above, we believe that the disability standard we adopted in the interim final and final rules is consistent with the statutory definition of disability in children. We explained our reasons for this conclusion above and in the preamble to the interim final rules.

As the commenters recognized, in enacting Pub. L. 104-193, Congress intended that we apply a stricter standard of disability than the one used under the prior law. Previously, a child would be considered disabled if he or she had an impairment or combination of impairments that was of "comparable severity" to one that was disabling in an adult. Our rules interpreting the comparable severity standard at the IFA step contained guidance that illustrated a level of impairment severity that generally, though not invariably, would be found sufficient to establish comparable severity. See § 416.924e (1996) in the rules that preceded the interim final rules. Under these regulations, we could find a child disabled if we found on an IFA that his or her impairment or combination of impairments resulted in a "marked" limitation in one domain and a "moderate" limitation in another domain, or if his or her impairment(s) resulted in "moderate" limitations in three domains. See § 416.924e(c)(1) (i) and (ii), and § 416.924e(c)(2)(i) and (ii) (1996).

Section 211(b)(2) of Pub. L. 104-193, 104 Stat. 2105, 2189, specifically directed us to discontinue use of the IFA set forth in former § 416.924d and 416.924e. In accordance with that statutory directive, we deleted those rules in the interim final rules. We have no authority to retain or reinstate the IFA. Furthermore, the suggestions to revise the disability standard to include children with impairments of less than listing-level severity (e.g., one marked and one moderate limitation or three moderate limitations in "crucial" areas) would, in essence, result in the same level of severity we used when we performed an IFA under the prior law.

We do not believe that it would be consistent with the statutory definition of disability to allow a child to be found disabled based on one marked and two moderate limitations, or multiple moderate limitations, as some commenters suggested. "Moderate" limitations represent a wide spectrum, ranging from just above "slight" to just below "marked." Consequently, we do not believe that a standard of severity based on moderate limitations, even multiple moderate ones, reflects a level of impairment severity that results in

marked and severe functional limitations.

We disagree with the commenter who characterized our listings as "extreme" pathology, gross failure of treatment, and no meaningful level of functional ability. Our definition of "listing-level severity" in §§ 416.902 and 416.925(b) of the interim final rules—based on marked limitations in two domains or extreme limitation in one—made clear that a child could meet the standard without being as functionally limited as this commenter indicated.

We have, however, made many changes to address these concerns. Throughout the final rules, we made a number of changes to better explain how we consider the combined effects—what we now call the "interactive and cumulative effects"—of impairments. For example, we clarify in final § 416.926a(e)(2), what we have always intended by our statement in § 416.926a(c)(3)(C) of the interim final rules, that "marked limitation may arise when several activities or functions are limited or even when only one is limited." We have clarified the sentence to provide that there may be a marked limitation when a child's "impairment(s) limits only one activity or when the interactive and cumulative effects of [the] impairment(s) limit several activities." We made similar changes in the definition of "extreme" limitation in final § 416.926a(e)(3). We also clarified our definitions of these rating terms and improved our rules for evaluating functional limitations. We believe that the changes we made in the functional equivalence rules will address many commenters' concerns about how cases are evaluated using the childhood disability standard.

*Comment:* Some commenters thought that there was "no justification in medical practice" for our interpretation of the statutory definition of disability for children, and that regulations need to more accurately reflect the current knowledge-base about what constitutes severe disorders in children. These commenters maintained that our interpretation would place many children with severe disorders at risk of losing their SSI payments.

A few commenters thought the severity standard represented an overreaction to the problem of program abuse, e.g., alleged parental "schooling" (i.e., coaching) of children, or that it was our solution to budgetary problems, at the expense of children with disabilities.

*Response:* The references to "medical practice" and the "current knowledge-base about \* \* \* severe disability in children" were unclear. We do not

believe that any part of these childhood disability regulations is inconsistent with, or contrary to, current medical practice or knowledge. Our intent is to fully recognize and fairly adjudicate cases of severe disability in children under the standard required by Pub. L. 104–193. Also, as noted in the previous response and in our summary of the final rules, we made many changes that we believe will address the commenters' concerns about how we evaluate a child's functional limitations within the domains.

We believe that the summary of our actions since 1997 at the beginning of this preamble responds to commenters who expressed concern that our interpretation would place many children with severe disorders at risk of losing their SSI payments. As we noted there, the Commissioner shared their concern and ordered a top-to-bottom review of our implementation of the law. As a result of that review, we took a number of major actions to ensure that children receiving benefits who should not have lost eligibility as a result of the changes in Pub. L. 104–193 retained their eligibility. The actions we took also helped to improve adjudication of new childhood disability claims.

As noted earlier, we believe that we have implemented Pub. L. 104–193 as Congress intended. Our interpretation was not an “overreaction” to reports of “coaching.” The commenter correctly noted that the issue of “coaching” of children, which was raised several years ago, was addressed in numerous ways before Congress changed the definition of disability. We studied the issue ourselves, as did the Office of the Inspector General for the Department of Health and Human Services, and the General Accounting Office. None of those studies found any noticeable incidence of parental coaching of children. Of the few instances in which coaching (or malingering) was suspected, none involved a finding of disability or eligibility for SSI payments.

*Comment:* A few commenters suggested that we adopt eligibility criteria for other Federal and State programs for the children's SSI program. They specifically mentioned programs administered under Part H of the Individuals with Disabilities Education Act (IDEA) (now Part C of the IDEA, 20 U.S.C. 1431–1445, as a result of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105–17, 111 Stat. 37, 106–123). Some commenters suggested that we adopt the decisions made by other agencies.

*Response:* We did not adopt the comments. As we noted in both the preamble to the interim final rules and

earlier in this one, Congress provided a specific statutory standard for evaluating disability in children under SSI. We do not have the authority to adopt a definition from another statute.

Consistent with our longstanding policy, we cannot adopt disability determinations made by any other Federal or State programs. (*See* § 416.904.) The Act requires that the Commissioner of Social Security and his delegates, and not another governmental or non-governmental party, make the determination that a child is or is not disabled.

*Comment:* One commenter stated that the nature and cost of caring and providing support for individuals not properly served early in life increases significantly in their adult and aging years. This commenter believed that this argued for early intervention and a broader interpretation of the regulations.

*Response:* As noted above and in the preamble to the interim final rules, we believe that the disability standard in these rules is consistent with the level of severity intended by the statutory definition of disability. However, we believe that the final rules will address concerns expressed by this commenter by ensuring that children who apply for SSI benefits will have their impairments evaluated fairly and in a manner consistent with the law. We also believe that the changes clarify our rules and procedures for evaluating the eligibility of infants and toddlers by providing the same number of domains of functioning and more detailed instructions and examples for them.

*Comment:* Several commenters noted that the word “severe” had two different definitions under the law and that the regulations contained at least two instances where the two were used in the same sentence. They suggested that we change the regulations to minimize confusion, and provided specific language changes.

*Response:* We partially adopted the comments. In the final rules we revised sentences noted by one commenter that used the word “severe” twice in different contexts within the same sentence. We also replaced many of the references to “marked and severe functional limitations,” the statutory standard, with phrases indicating that our intent is listing-level severity; *i.e.*, that the child's impairment(s) must meet, medically equal, or functionally equal the listings, avoiding the use of the word “severe.”

However, we did not adopt the comments that asked us to replace the word “severe” in step two of the sequential evaluation process for children with another term. We have

used this term of art in our regulations and other instructions for evaluating disability in adults for over 20 years and for children since 1991. We believe that changing it now would be confusing.

#### *Section 416.912 Evidence of Your Impairment and Section 416.913 Medical and Other Evidence of Your Impairment(s)*

*Comment:* One commenter said we should ask specific, individualized questions when requesting information from a treating source, teacher, or other individual to ensure the evidence addresses the critical issues for the particular applicant's impairment.

*Response:* Our operating procedures already instruct the State agencies to make requests for information as specific as possible. We revise and update our forms for requesting information to ensure that we ask for relevant information. For example, we are developing a national teacher questionnaire for teachers to report specific information about a child's functioning. The State agencies also revise their forms as necessary to reflect changes in our rules and the needs and practices of their local medical providers, schools, and other sources.

*Comment:* Several commenters said some children will not have resources to obtain a medical professional's opinion about the causes of their functional limitations. One commenter thought we should provide more assistance to families, especially in rural areas, to help them obtain relevant medical evidence for their disabled children. Another believed that functional limitations are self-evident, so there is no need for other expensive corroboration. One commenter expressed concern about parents of children from non-English-speaking households who lack a network of medical treating sources to provide evidence.

One commenter recommended that we emphasize that evidence other than symptoms, signs, and laboratory findings can play an extremely important role in establishing SSI eligibility. The commenter said that evidence from other qualified professionals, such as speech-language pathologists, audiologists, occupational and physical therapists, educators and early intervention specialists should be used, when appropriate, and examples of such evidence should be provided.

*Response:* Section 416.912(d) of our regulations has long provided that we will make every reasonable effort to help individuals, including children and their families, to get medical reports from their own medical sources and

other evidence if we have their permission to do so. Section 416.914 of our rules also provides that we will pay for existing medical evidence, if there is a charge.

Under our rules in §§ 416.917 through 416.919a, we may also ask a child to go to one or more consultative examinations to get evidence we need to make a determination. There are several reasons we may ask a child to undergo a consultative examination, especially to get medical evidence when there is no medical source. When we ask a child to go to a consultative examination, we pay for the examination. We also have procedures to help people who do not speak English when they go to one.

In many cases, information we receive from schools includes medical evidence. Also, we recently revised our rules on medical evidence in § 416.913 to recognize school psychologists and speech-language pathologists as acceptable medical sources for certain kinds of impairments. (See 65 FR 34950.)

In response to these comments and others, the final rules clarify the different sources from whom we may seek evidence of a child's medical condition or functional limitations. For example, we added references to early intervention programs, preschool, and childcare. We emphasized our longstanding policy that school evidence is important information about a child's functioning, and added references to other important sources of information about functioning, such as physical, occupational, and rehabilitation therapists, who may see a child at school or elsewhere. Finally, we added cross-references to our rules on evidence to final § 416.926a(b)(3), the section on how we consider functioning.

We disagree with the commenter who thought that a child's functional limitations are always self-evident. On the contrary, these final rules recognize that children may function differently in different settings and that some serious limitations may not be obvious; for example, when a child appears to be functioning well but is in fact receiving extraordinary assistance or supervision in a structured setting. In any event, section 1614(a)(3)(H)(i) of the Act (which incorporates by reference the provisions of section 223(d)(5)(A) of the Act) and §§ 416.928(a) and 416.929 of our rules specify that we need medical evidence (signs, symptoms, and laboratory findings) to determine disability.

These provisions indicate that a claimant's statements of symptoms are not by themselves conclusive evidence

of disability. We must first establish the existence of a medically determinable impairment based on evidence from acceptable medical sources. Then, the evidence we use to assess the severity of a medically determinable impairment may come from both the "acceptable medical sources" listed in § 416.913(a), and "other sources" listed in § 416.913(d)(1) (including audiologists, occupational and physical therapists, educators, and early intervention specialists). Section 416.912(b)(4) includes a cross-reference to the sources listed in § 416.913(d).

*Comment:* One commenter thought we should consider assessments provided by psychiatric social workers, clinical psychologists and clinical nurse specialists, as "valid and appropriate documentation" of a child's disability.

*Response:* We consider licensed or certified psychologists to be "acceptable medical sources" in § 416.913(a)(2) of our regulations. As we previously stated, once we find that there is a medically determinable impairment with evidence from acceptable medical sources, we consider all relevant evidence we have in the case record when we decide whether a person is disabled. This may include evidence from health care professionals such as psychiatric social workers and clinical nurse-practitioners. Evidence from these other health care professionals helps us understand how a child's impairment(s) affects his or her ability to function, even though these sources are not "acceptable medical sources" for purposes of establishing the existence of a medically determinable impairment. This decision reflects our determination that there is insufficient standardization of their qualifications among the States for us to use them as acceptable medical sources.

*Comment:* One commenter believed that the regulations should require school psychologists or other appropriately qualified mental health professionals, familiar with the school context and educational disabilities, to be involved in reporting information to us, because the way that observations of a child's disability are communicated could affect an eligibility determination. The commenter was concerned that the interim final rules could "marginalize[]" or exclude information from schools from the disability determination process. Similarly, another commenter requested that we amend the section on school attendance in § 416.924c(g) of the interim final rules to state that information on school functioning is always relevant and must be available.

*Response:* The first comment was not clear to us, possibly because the letter

did not specify language in the interim final rules that the commenter believed could lead to the exclusion of information from schools and education professionals. We consider reports from school professionals to be very important evidence of a child's functioning, and we made changes to the final rules to clarify this point.

We do not require information from school professionals in all cases because sometimes we can decide that a child is disabled without it, such as when a child's impairment(s) meets the requirements of certain listings. We also cannot require school evidence in all other cases because sometimes we are unable to get it despite reasonable efforts. However, our rules require our adjudicators to try to get school records whenever they are needed to make a determination or decision regarding a child's disability.

In addition to strengthening our rules about school evidence, which we explained previously, we are taking other actions to improve the type of evidence we get from schools. As already noted, we are developing a national teacher questionnaire to improve the evidence we get from teachers and other educational professionals. We also recently issued final rules to make school psychologists, or other licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting, "acceptable medical sources" in § 416.913(a) for the purpose of establishing mental retardation, learning disabilities, and borderline intellectual functioning.

#### *Section 416.919a When We Will Purchase a Consultative Examination and How We Will Use It*

*Comment:* Several commenters suggested that we amend the regulations to indicate that State agencies will purchase tests to assess functioning when relevant or specifically to help establish functional equivalence. Others stated that we should require State agencies to schedule consultative examinations to obtain standardized testing to measure functioning when such testing is appropriate and not available from the child's treating source. One commenter also recommended that we regularly provide guidance to the State agencies about which tests are currently available and reliable to assess functioning for different age groups.

*Response:* We did not adopt the comments in these final rules. We do not have general rules specifying the kinds of tests we purchase in all cases and, generally, we do not endorse

particular instruments in our regulations. Many standardized tests, like IQ tests, measure a child's abilities, not functioning, and may or may not reliably predict any given child's actual functioning. In some cases, there are no standardized tests to measure functioning in particular domains or for particular age groups, nor are all test instruments widely used or available. In many cases, we do not need to purchase standardized tests of ability or functioning because the case record contains sufficient information about functioning for us to make a determination or decision.

On the other hand, we agree that standardized testing can help improve the uniformity of decisionmaking. For this reason, we stress in the final rules the need to request records from early intervention programs, preschools, and schools, which often include the results of standardized testing. However, as already noted, we repeatedly caution our adjudicators not to rely exclusively on such tests because it is critical to consider their results in the context of all other evidence in the case record.

Sections 416.917 and 416.919a of our regulations provide for State agencies to purchase appropriate consultative examinations when evidence in the case record is not sufficient for us to make a disability determination or decision. These examinations may include standardized tests to assess ability or functioning.

We believe that the general suggestion that we provide guidance to our adjudicators about tests that are currently available and reliable is a good one. We have provided such guidance in the past in subregulatory documents and will consider whether to do so in the future. However, we believe that it would not be feasible for us to regularly provide information on all available, reliable tests because there are so many of them and new ones are constantly developed. To some extent, we must rely on the professional judgment of individuals who provide evidence to us and the ability of the individuals who adjudicate or review claims to follow what is available in their local area and to know which tests are available and appropriate for particular cases.

*Comment:* Two commenters recommended that we clarify that if information received from a treating source, teacher, therapist, or other source is not sufficient to make a determination, adjudicators must seek additional consultation in order to make a determination based on complete and accurate information.

*Response:* We agree with these comments, but do not believe that any

changes are needed in these final rules. Sections 416.917 and 416.919a of our regulations already provide appropriate guidance for when to purchase a consultative examination. We have, however, included cross-references to our rules on consultative examinations in final § 416.926a(b)(3) in response to these and other comments.

*Section 416.919n Informing the Examining Physician or Psychologist of Examination Scheduling, Report Content, and Signature Requirements*

*Comment:* Several commenters thought that the rules describing a complete consultative examination should include more detail about a child's functional limitations. They suggested adding a cross-reference to the areas of functioning for each age group, and requiring consultative examination reports to include an analysis of a child's functioning by comparison to the specific areas for the relevant age groups. They also recommended adding the appropriate cross-references to the rules on consideration of age (§ 416.924a of the interim final rules), functioning (§ 416.924b), other factors (§ 416.924c), and symptoms, including pain (§ 416.929).

*Response:* As explained above in the summary of the changes, we adopted most of these comments by adding cross-references throughout the final rules. In addition, we revised §§ 416.913(c)(3) and 416.919n(c)(6), our rules on the content of medical reports and reports of consultative examinations, to reflect the new domain names in final § 416.926a.

*Section 416.924 How We Determine Disability for Children*

*Comment:* One commenter suggested that we revise the sequential evaluation process for children by separating the third step of the process (meets, medically equals, functionally equals) into three parts. The commenter thought that this would help ensure that adjudicators will apply each aspect of the third step before denying a claim.

*Response:* We did not adopt the comment. We believe that adjudicators properly understand and apply the current three-step sequential evaluation process. However, we made a number of changes to clarify and improve § 416.924, as we explained in the summary of changes earlier in this preamble.

*Comment:* A few commenters thought that we should require all adjudicators, including administrative law judges and administrative appeals judges on the Appeals Council, to explain their

findings using our Form SSA-538, the Childhood Disability Evaluation Form. Others thought that we should include the form in the text of the rules or make the form widely available to the public, including members of the medical community, by publishing the form in the **Federal Register** or posting it on our Internet site. Others suggested specific revisions to the form, such as adding cross-references to various rules to the form.

*Response:* We did not adopt the comments.

As we discussed in the preamble to the interim final rules (62 FR at 6412), our decision not to require administrative law judges or administrative appeals judges on the Appeals Council (when the Appeals Council issues a decision) to complete the form was based on the fact that these adjudicators issue decisions with detailed rationales and findings that explain how they apply the three steps of the sequential evaluation process for each child. Administrative law judge and Appeals Council decisions are quite different in form from most determinations prepared by a State agency because they include a more detailed explanation of the findings and conclusions, supported by a narrative rationale.

Consequently, requiring administrative law judges and administrative appeals judges to complete Form SSA-538 and append it to their decisions would only repeat information that is already contained in their decisions. This policy parallels what is done for adult disability claims, for which we do not require these adjudicators to complete or attach to their decisions residual functional capacity assessment forms. However, the final rules do not prohibit the use of Form SSA-538 at the hearings or appeals levels as a checklist or to help organize information in the record.

We did not require disability hearing officers in the State agencies to complete the form because they also provide detailed rationales on a special form that replicates information on Form SSA-538. However, we plan to issue a new form for disability hearing officers to use in childhood disability cases that will be specific to these final rules.

Although our forms are widely available to the public in our local offices, we do not include the text of any of our forms in our rules because they are not part of our substantive rules. Moreover, including Form SSA-538 in the rules would codify it and unnecessarily limit our flexibility to

change it as needed without undertaking rulemaking proceedings.

However, we agree with commenters who recommended that we revise the form. We are revising the form to be consistent with the changes in the final rules, and plan to have it ready by the time these rules go into effect. When we revise the form, we will consider ways in which we can ensure that it continues to be made available to the public, including the suggestions from the commenters.

#### *Section 416.924b Functioning in Children, Interim Final Rules*

*Comment:* One commenter objected to the following statement in § 416.924b(b)(3): “Ordinarily, activities of daily living are most important as indicators of functional limitations in children aged 3 to attainment of age 16, although they may be used to evaluate children younger than age 3.” The commenter believed this statement ignores the importance of considering school functioning and social relationships.

*Response:* We agree that the statement could have been confusing. For this and other reasons described earlier in this preamble, we deleted the provision and all the terms previously defined in § 416.924b, including “activities of daily living.”

#### *Section 416.924c Other Factors We Will Consider, Interim Final Rules*

*Comment:* Several commenters recommended that we provide more specific guidance to adjudicators about how to consider “other factors” when evaluating disability. Some suggested that we link the “other factors” rules specifically to those for functional equivalence either by cross-references or by citing the areas of functioning affected by “other factors” considerations. A number of commenters recommended that we incorporate more detailed guidance from our operating instructions on “other factors” into the regulations. These commenters recommended that we clarify that:

- Structured settings or other highly supportive environments may appear to improve a child’s functioning when the child’s impairment(s) results in functional limitations outside the setting;
- A child may appear less impaired on a single examination than the evidence over time may show; and that
- Treatment may cause side effects that result in functional limitations.

*Response:* We adopted the substance of all of these comments, although we did not necessarily duplicate text from

our prior operating manual sections. As explained above in the summary of the changes, we significantly improved the “other factors” section of the rules. See final § 416.924a, “Considerations in determining disability for children.” We believe it is now a more comprehensive rule that expands and clarifies our guidance for considering the various individual factors, including some that are addressed in these comments. Provisions of the final rules that address specific factors mentioned in the comments are found in final § 416.924a(b)(5) (structured and supportive settings), new § 416.924a(b)(6) (one-time examinations, such as consultative examinations), and § 416.924a(b)(9) (medication and other kinds of treatment).

*Comment:* One commenter suggested that we explain that other factors could increase the severity of a limitation in a specific area. This commenter noted that the presence of a significant “other factor” should allow an adjudicator to find a greater degree of limitation than would exist without consideration of the factor(s). The commenter provided an example of a child who has a moderate limitation and uses an assistive device. The commenter believed that such a child should be found to have a marked limitation.

*Response:* We clarified the rules in response to this and other comments, but not in the specific way recommended. The purpose of the section on “Other factors” in the interim final rules was to provide guidance about some of the factors we consider when we evaluate a child’s functional limitations, in addition to the objective medical findings and the child’s symptoms. They are not additional factors to apply after we evaluate functioning, but are an integral part of the functional analysis. In response to this and other comments, we clarified all of the “other factors” rules in final § 416.924a and clarified in final § 416.926a that, at the functional equivalence step, we first look at a child’s functional limitations in any domain that is affected.

We do not agree with the commenter’s example, but it is to some extent addressed by several of the final provisions, especially final § 416.924a(b)(5). In that section, we explain that when we rate a child’s functioning we consider the amount of extra help or adaptation the child may need to function as well as he or she does compared to other children of the same age who do not have impairments. Thus, we consider the need for an adaptation when we consider how

seriously a child’s functioning is limited.

However, that does not mean that we automatically presume that a child with an unspecified “moderate limitation in motor functioning” has a “marked” limitation merely because he or she uses an adaptive device. Apart from the fact that these rules do not define a “moderate” limitation, the example was too nonspecific. As we explain in final § 416.924a(b)(5), we consider how well a child functions by examining how independently the child is able to initiate, sustain, and complete his or her activities despite his or her impairment(s), compared to children of the same age who do not have impairments. We also clarify in these final rules our longstanding policy that we consider each child’s impairment(s) and the functional limitations that result from it in any and all of the affected domains.

*Comment:* A number of commenters recommended that we include in the list of other factors the “risk factors” that were proposed by some of the individual experts who gave us information to help us formulate the childhood disability regulations in 1991. Some commenters suggested that applicable “risk factors” would include: biological factors (e.g., malnutrition, anemia and recurrent infections); factors related to health care (e.g., less than optimal treatment availability); a history of abuse and neglect; multiple foster home placements; separation from family; and “toxic environment.” The commenters recommended these risk factors because they believed they are objectively observable and are considered indispensable by the professional communities when evaluating pediatric impairments.

*Response:* We did not adopt the comments that asked us to include specific “risk factors,” although we expanded the list of factors in final § 416.924a that we will consider when evaluating a child’s functioning. We also revised the areas of functioning to consider more specifically physical effects of impairments when we decide functional equivalence.

We addressed the issue of “risk factors” extensively in earlier versions of the childhood disability rules. We first addressed the issue in 1991 when we published regulations in response to the *Zebley* decision (56 FR 5534, 5551 (1991)). We received a number of identical public comments in response to those rules and again addressed the issue when we published revised rules in 1993 (58 FR 47532, 47552, 47575 (1993)). As we made clear in those earlier rules, we do consider what the

commenters called “risk factors” to the extent that they affect a child’s medical status and functioning. However, some of the other factors recommended by the commenters are not relevant to a determination of disability. Interested readers may read a more extensive discussion of our reasons for not adopting this comment in those earlier publications.

*Comment:* One commenter suggested that we strengthen the language regarding periods of remission because with medication, intervention, and therapy, many children experience periods of adequate functioning and require more intensive treatment and intervention only during periods of deterioration. The commenter believed that a period of 12 “contiguous” months of disability may not be appropriate for such children, and that the variation in the expression of “severe mental impairment” is not adequately addressed in the regulations and may lead to some children being inappropriately disqualified.

*Response:* We adopted the comment by clarifying how we evaluate chronic impairments, especially in final § 416.924(b)(8), where we added new sentences to address the comment. We explain in that section that we recognize that when a child has a chronic impairment(s), his or her functioning may vary considerably over time and that we need to take into account the child’s ability to function over time. This means that we will take into account any variation in a child’s level of functioning to determine the impact of a chronic illness on his or her ability to function.

However, we do not agree with the suggestion that a child with a chronic impairment should not have to show disability over a continuous period of 12 months. The Act requires that a child be disabled for a continuous period of 12 months (or be expected to be disabled for a continuous period of 12 months), unless the impairment is expected to result in death.

#### *Section 416.926 Medical Equivalence for Adults and Children*

*Comment:* Several commenters recommended that we clarify this section to ensure that adjudicators will consider all relevant evidence, not just symptoms, signs and laboratory findings, when we make a finding regarding medical equivalence.

*Response:* We agree with the commenters’ concerns that the regulation could be misinterpreted. Our policy is that the phrase “medical evidence only” in § 416.926(b) excludes consideration of only the vocational

factors of age, education, and work experience. Other than these vocational factors, in accordance with § 416.926(a), we consider all relevant evidence in the case record when we make a finding regarding medical equivalence.

This issue was raised in the decision in *Hickman v. Apfel*, 187 F.3d 683 (7th Cir. 1999). In *Hickman*, the Court of Appeals interpreted our language in § 416.926(b) to preclude an adjudicator from relying on evidence other than evidence from a medical source when making a finding regarding medical equivalence. The *Hickman* decision differs from our national policy by requiring adjudicators to consider only a narrow definition of medical evidence, that is, evidence from medical sources, in determining medical equivalence and not permitting the use of other relevant evidence. In contrast, we interpret “medical evidence” broadly, to include not just objective test results or other findings reported by medical sources, but other information about an individual’s medical conditions and their effects, including the individual’s own description of his or her impairments. Thus, the Court’s decision that medical equivalence is decided based solely on evidence from medical sources interprets the “medical evidence only” language of the regulation more narrowly than we intend.

On May 3, 2000, we published an acquiescence ruling, AR 00–2(7), for the *Hickman* decision (65 FR 25783). As we noted in that acquiescence ruling, we intend to clarify the regulations at issue in *Hickman* through the rulemaking process (65 FR at 25785). The concerns raised by the commenters here were focused on the title XVI regulations, the regulations for SSI benefits. We believe, however, that similar concerns apply to our regulations under title II of the Act, the regulations for Social Security Disability Insurance benefits, 20 CFR 404.1526. Since clarifying the title II regulations would be outside the scope of this rulemaking proceeding, we intend to consider the commenters’ concerns on this issue when we clarify the regulations in response to *Hickman*.

*Comment:* A few commenters suggested that we provide examples of impairments that we consider to be medically equivalent to a listed impairment, as we did for functional equivalence in § 416.926a(d) of the interim final rules. The commenters believed that such examples would be useful to adjudicators. One commenter believed that the examples should clarify how a child can establish medical equivalence when the impairment is in the listings, but the

child is either missing a criterion of a listing or presents with a listed criterion but at a level less severe than required by the listing.

*Response:* We did not adopt the comment because it is outside the scope of this rulemaking process. We will consider the suggestions, and if we decide to adopt them we will issue an appropriate notice of proposed rulemaking in the **Federal Register**.

#### *Section 416.926a Functional Equivalence for Children*

*Comment:* A number of commenters thought that the functional equivalence policy was too complicated or vague. These commenters asserted that adjudicators would be unable to apply the policy consistently and meaningfully, and would improperly deny applications when they were in doubt about how to apply the rules. Other commenters said the regulation did not provide a workable framework for determining whether one or more impairments functionally equal a listed impairment.

The commenters made various suggestions. Some commenters wanted us to provide additional information, examples, and guidance about how to apply each functional equivalence method, or to specifically instruct adjudicators to apply the policy. Others suggested that we simplify the policy, because it was too difficult for adjudicators and the public to determine which listings had “disabling functional limitations” among their criteria. One commenter suggested that we include a section-by-section guide of the functional consequences contained in the listings because the list of impairments is very long and complicated. One commenter recommended that we incorporate in the regulations more detailed and specific explanations, definitions, and examples to help clarify the process for establishing functional equivalence.

Some commenters recommended that we delink the functional equivalence policy from the listings. One commenter recommended that we adopt one simple, easily understood method for determining functional equivalence rather than four methods.

*Response:* As noted in the summary of changes, we made a number of changes in response to these comments. We simplified the process for determining functional equivalence to a single method, delinked it from explicit reference to the listings, and provided more guidance throughout the final rules, including in § 416.926a. We clarified and expanded the definitions of “marked” and “extreme” limitations.

In all but one case (health and physical well-being), we provided within each domain descriptions of typical functioning of children who do not have impairments, broken out by age group. For all six domains, we also provided examples of limitations.

We do not agree with those commenters who thought that adjudicators might have improperly denied applications when in doubt about how to apply the functional equivalence provision. However, we recognize that these comments were made when the interim final rules were published in 1997, when some people were worried about this possibility. These comments were submitted before we began the corrective actions described earlier, including the Commissioner's top-to-bottom review and extensive adjudicator training to ensure proper application of the rules.

We do not agree that we need to specifically instruct adjudicators to apply the functional equivalence provision, as some commenters recommended. The regulations provide a sequential evaluation process for childhood disability claims in § 416.924, and they discuss the determination process at step three in detail in §§ 416.924a through 416.926a. We believe that these regulations make clear that if a child's impairment(s) is severe and does not meet or medically equal the requirements of a listing, the adjudicator must evaluate whether the child's impairment or combination of impairments functionally equals the listings.

*Comment:* Some commenters said the interim final rules did not adequately define what constitutes a "marked" or an "extreme" limitation and that this could result in incorrect and inconsistent determinations and decisions. In addition, some commenters recommended that case illustrations of impairments that interfere seriously with a child's functioning, and thus result in a "marked" limitation, should be included in the regulations.

A few commenters thought the definition of an "extreme" limitation was internally inconsistent. These commenters noted that the definition of an "extreme" limitation for children from birth to the attainment of age 3 was one resulting in functioning at less than one-half chronological age. In contrast, the definition for children from age 3 to the attainment of age 18 was "no meaningful function in a given area." These commenters pointed out that a child functioning at less than one-half of chronological age may be less impaired

than one with no meaningful function in a given area.

*Response:* As noted in the summary of the changes and responses above, we clarified and expanded our definitions of the terms "marked" and "extreme" in response to these comments. However, we did not include examples or case illustrations of impairments that result in "marked" or "extreme" limitations. As we clarify throughout these rules, any physical or mental impairment or combination of impairments may result in a marked or extreme limitation in one or more domains if it causes sufficiently serious functional limitations. Also, to properly provide examples of functional limitations that satisfy the definitions of the terms would have required far too many examples to cover each of the six domains and five age categories, as well as physical and mental impairments and combinations of impairments.

We agreed with the commenter who observed that people might misunderstand what we intended by "no meaningful function" in our definition of "extreme." In response, we deleted the phrase. In its place, we now explain in the final rules that, although we use "extreme" to rate the worst limitations, it does not necessarily mean a total lack or loss of ability to function. Our intention is to parallel the definition of a "marked" limitation as the equivalent of the functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean. Therefore, we define "extreme" limitation as the equivalent of the functioning we would expect to find on standardized testing with scores that are at least three standard deviations below the mean.

*Comment:* Many commenters referred to the provisions of § 416.926a(c)(3) of the interim final rules defining "marked" limitation to mean a valid score that is two standard deviations or more below the norm for the test, but less than three standard deviations. Most noted that no test is exact, and that all tests include a measure of uncertainty called the "standard error of measurement" (the SEM), which they urged us to recognize.

Some commenters believed that we should establish rules to provide that a child's impairment(s) meets or equals the requirements of a listing when the child's test scores are within one, or even two, SEMs for the particular test or protocol. Others referred to specific tests, such as the Wechsler Intelligence Scale for Children—Third Edition, and noted that a child who had a score of 70 on that test, plus or minus two SEMs, should be found to have a marked

limitation of cognitive functioning. The commenters asserted that many children will be unfairly denied benefits unless the rules recognize the concept of the SEM.

*Response:* In response to these comments, we clarified our rules on how we consider test scores in final §§ 416.924a(a)(1) and 416.926a(e)(4). However, we did not adopt the comments that asked us to refer explicitly to the SEM in our rules. We also did not adopt the comments that said we should accept as meeting a test criterion in the listings or satisfying the definition of "marked" or "extreme" any test score that was within one or two SEMs above the requirements in these final rules and other regulations.

As noted in our summary of the changes, we agree that all test scores are less than perfectly reliable. Professionals use the SEM to estimate how reliable any given score may be as a measurement of a child's ability in the area being tested. For example, one can reasonably conclude that 68 percent of the time a child's score on an IQ test with an SEM of 5 will fall within a band of 10 points (plus or minus one SEM) of the score that was actually obtained; e.g., 67 to 77 with a score of 72 and an SEM of 5. Ninety-five percent of the time a child's score on an IQ test with an SEM of 5 will fall within a band of 20 points (plus or minus two SEMs) of the score that was actually obtained; e.g., 62 to 82 with a score of 72 and an SEM of 5. This means that a child who scores a 75 on an IQ test with an SEM of 5 has a 95 percent chance of having a "true" ability that would be shown by a score somewhere between 65 and 85.

Therefore, it would be incorrect, as many of the commenters suggested, to assume that an IQ (or other test score) of 74 or 75 with an SEM of 5 "includes" an IQ of 70. It would also be wrong both scientifically and as a matter of public policy for us to issue a rule that requires our adjudicators to apply only the "minus" half of the "plus or minus" consideration that the SEM requires.

The final rules include two important principles we have taught our adjudicators over the years. First, no test score can be considered in isolation from all of the other information about a child's abilities and actual functioning. Second, it is primarily the responsibility of the person who administered the test to decide whether it reliably measures a child's abilities. The final rules also incorporate specific requirements for our adjudicators when they do not believe that a test score accurately indicates a child's abilities. We believe that these changes address the major concerns of the commenters.

*Comment:* Several commenters expressed concern about how the definitions of “marked” and “extreme” that are based on a developmental quotient apply to the evaluation of children from birth to attainment of age 3. One letter (from a group of medical professionals) pointed out that the standard becomes progressively stricter for older children within this age range. For example, the letter noted that under the rules a child has an “extreme” limitation when he or she is functioning at one-half of his or her chronological age in a domain. Therefore, a 1-year-old child would meet the standard by being 6 months behind, while a 3-year-old would need to be delayed 18 months. As a result, the 3-year-old would have to demonstrate a more serious limitation by functioning at a level appropriate to a child 1½ years old.

The letter suggested that we evaluate children from birth to age 3 based on three age categories (birth to 12 months, 13 to 24 months, and 25 to 36 months) and suggested new definitions for our terms to fit the three proposed categories. Another commenter recommended that the criteria used to define and describe “marked” and “extreme” should be used as guidelines rather than standards, since there is no objective way to evaluate accurately whether a child has reached a level of functioning that is characteristic of one-half (versus two-thirds) of his or her chronological age.

*Response:* We revised the rules in response to these comments but did not adopt the specific suggestions.

We used a developmental quotient in the interim final rules as an approximation for when we do not have standard scores in the case record. To make this clear in response to the comments, we revised the definitions of “marked” and “extreme” to indicate that in this age range we will base our findings on developmental quotients only when there are no standard scores from standardized tests in the case record.

We did not agree with the proposal to divide the birth to age 3 range into three separate ranges because we believe that at these early ages our single rule yields a sufficiently accurate estimate. We also expect that the older children in this range will have more standardized testing in their case records and that we will not have to use the developmental quotient alternative as often as for the very youngest children.

In response to the commenter who thought that the definitions of “marked” and “extreme” should not be strict standards, we explain throughout the final rules that we must consider all

relevant information in a child’s case record to determine whether the totality of the information indicates that a child has a “marked” or an “extreme” limitation. That is why we provide alternative definitions for the terms.

*Comment:* A number of commenters urged us to separate the cognitive/communicative area of functioning into two separate domains. Some noted that neurological disorders or brain injuries can affect cognition and communication differently, because the two functions involve separate areas of the brain and impairments may affect each area differently. Some commenters stated that communication warranted a separate domain because no other facet of human behavior has such a direct impact on daily life: it is the foundation for acquiring many other skills and for adapting to other impairments. They asserted that from a clinical perspective, a child with mental retardation and a “moderate to severe” limitation in communication is extremely disabled, and would have minimal ability to compensate for functional limitations by using assistive technology.

*Response:* The new domains respond to these concerns. Communication comprises both language and speech, and language serves two purposes: it enables us to think and to communicate. Although the ability to think and the ability to use language may be affected differently by brain injuries and disorders, language ability is inherent in verbal reasoning or thinking in normal human functioning. This makes it necessary to consider thought and some aspects of language in a single domain. The new domain of Acquiring and Using Information recognizes that a child uses language to learn (acquire information) and to think (use information).

Language also enables us to communicate with words, and the use of both verbal and nonverbal communication skills in social contexts (called the pragmatics of language) is an essential aspect of social functioning. The new domain of Interacting and Relating With Others recognizes that a child uses language to play with friends, to interact with peers and adults at school, and to relate to family members and other children. This domain also recognizes that, since limitations in speech (articulation, voice, and fluency) can interfere with a child’s oral communication skills at home, at school, or in the community, it can affect how the child interacts with and relates to other people.

Finally, a child with mental retardation may have difficulty in using language to learn or to interact and

relate with others that is not a function of intellectual ability but, rather, is a separate impairment that causes an additional, significant limitation of functioning. This situation is recognized by, and evaluated under, listings 112.05D and F. However, any child who must use assistive technology to communicate, even one who does not have mental retardation, would likely have an impairment that meets or medically equals a listing.

*Comment:* Several commenters recommended that we provide areas of functioning for children with physical impairments such as respiratory and digestive disorders. They thought that the addition of other areas of functioning was needed to address associated problems such as lack of endurance, frequency of infections, and recovery time after multiple procedures. One commenter recommended that we divide the motor area of functioning into separate areas for fine and gross motor skills, because the field of child development regards them as distinct and different.

*Response:* We adopted the first comment with the new domain Health and Physical Well-Being, which addresses the cumulative physical manifestations of physical or mental impairments and the effects of their associated treatments or therapies on a child’s functioning. We did not adopt the second comment because we believe that the domain of Moving About and Manipulating Objects is sufficiently described to make clear that fine and gross motor skills are different, but also that they work together in some aspects of a child’s functioning.

*Comment:* A number of commenters recommended that we add more domains for children from age 1 to the attainment of age 3. Some thought that having only three areas of functioning for children in this age range meant that the child would have to show a “pervasive” impairment of functioning, in a manner contrary to the statute. Many commenters recommended that we apply the domains of personal functioning and concentration, persistence, or pace, to children in that age group.

*Response:* We adopted these comments by revising the domains. As we have already noted, all six new domains apply to children in every age group.

*Comment:* One commenter thought that restricting the domain in the interim final rules we called “Responsiveness to Stimuli” to children from birth to age 1 ignored the impact of severe sensory deficits on the

functional capability of children older than 1 year.

*Response:* We adopted the comment. Sensory functions spread across virtually all of the domains for all ages, and sensory deficits or hypersensitivities can affect a wide range of a child's activities. In the final rules, we incorporated the principle of "responsiveness to stimuli" in the domain of Attending and Completing Tasks, which is applicable to children in all age groups. This domain addresses the child's capacity to respond appropriately to all kinds of stimuli, as well as its evolution into the capacity to attend appropriately to stimuli in all activities and settings. We also recognize more broadly, however, that limitations in sensory functioning may also affect a child in any of the domains.

*Comment:* Several commenters recommended that we add cross-references in § 416.926a to adequately integrate into the functional equivalence determination the need for consideration of a child's age, functioning, other factors, and pain and other symptoms. They provided specific language for a new subparagraph for § 416.926a that would include only cross-references.

*Response:* We adopted these comments, but did not introduce a separate paragraph of cross-references. Instead, where appropriate, we included cross-references throughout final §§ 416.924a and 416.926a. As we noted in the summary of changes, we also made a number of changes to give the "other factors" provisions greater prominence and to make them more comprehensive and easier to understand.

*Comment:* One commenter asked us to clarify the provision on the "combined effects of limitations due to ongoing treatment" in § 416.926a(b)(4) of the interim final rules. This commenter stated that the language in the regulations is not very relevant to children who have a serious emotional disturbance, such as a child who is placed in a self-contained classroom or in day treatment.

*Response:* We believe that the commenter was concerned that a child in a structured or supportive setting would not be functioning as well outside of this special environment. In final § 416.924a(b)(5), we clarified our longstanding rules on how we consider the effects of structured or supportive settings on children. We agree that such children may be more limited in their functioning than their symptoms and signs in the structured setting would indicate. Like the interim final rules, the final rules provide that we will also

consider the child's functioning outside of the structured or supportive setting.

*Comment:* A number of commenters expressed concerns about the 12 examples of functional equivalence in § 416.926a(d) of the interim final rules. The primary concern was that adjudicators may rely solely on the list and not recognize that other impairments may also functionally equal a listing. They suggested that we emphasize and reinforce through training and written instructions that the list is not exhaustive, that we update the list as more rare syndromes or disorders are identified, and that we explain why these particular examples functionally equal the listings. One commenter asked us to eliminate the age limit for example 12, gastrostomy in a child who has not attained age 3.

*Response:* We did not adopt the comments. We received the same comments in response to the 1991 childhood disability regulations. In the 1993 regulations, we added language to emphasize that "the examples do not describe all the possible effects of impairments that might establish equivalence to a listed impairment." In the preamble to the 1993 regulations, we explained why we did not adopt comments suggesting that we add rationales to some or all of the examples to provide more insight into their intent, and that we state the particular listings that are equaled in the various examples (58 FR at 47564). Those explanations are applicable to the current comments as well.

However, as already noted in our explanation of the final rules, we did delete examples 5 and 10 because of other changes we made; *i.e.*, the new domains and the delinking of the functional equivalence policy from specific listings.

#### *Section 416.987 Disability Redeterminations for Individuals Who Attain Age 18*

*Comment:* One commenter disagreed with the provision that requires us to redetermine the eligibility of SSI recipients who attain age 18 using the adult standard, required in section 1614(a)(3)(H)(iii) of the Act. This provision also requires that we do not consider the medical improvement review standard that applies in continuing disability reviews of adult and children. The commenter questioned the fairness of applying the criteria for new applicants, rather than the medical improvement review standard, when a child reaches age 18.

*Response:* We did not adopt the comment. Section 1614(a)(3)(H)(iii) of the Act states that when we perform an

age-18 disability redetermination under this provision, "paragraph (4)" (*i.e.*, section 1614(a)(4) of the Act) "shall not apply." Section 1614(a)(4) of the Act sets out the medical improvement review standard that we use when we perform CDRs. In light of the plain language of the statute, we have no discretion to apply the medical improvement review standard to age-18 disability redeterminations.

#### *Section 416.990 When and How Often We Will Conduct a Continuing Disability Review*

*Comment:* One commenter recommended that we provide a cross-reference in this section to § 416.924a(b) and provide that the corrected chronological age be used as the "trigger date" for a CDR.

*Response:* We did not adopt the comment, but revised this section to reflect a change in the law made in 1997 that addresses the commenter's concerns. As noted in the supplementary information section of this preamble, section 5522(a)(2) of the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251, 622, amended section 1614(a)(3)(H)(iv) of the Act, which required us to conduct a CDR at age 1 for children for whom low birth weight is a contributing factor material to the determination of disability. This revision allows us to schedule a CDR later than age 1 for a low birth weight child if, at the time we make the initial disability determination, we determine that the child's impairment(s) is not expected to improve within 12 months after birth.

We believe that the statutory change now reflected in final § 416.990(b)(11) addresses the commenter's concerns by providing us with greater flexibility in scheduling CDRs for these cases.

#### *Section 416.994a How We Will Determine Whether Your Disability Continues or Ends, and Whether You Are and Have Been Receiving Treatment That Is Medically Necessary and Available, Disabled Children*

*Comment:* One commenter had several concerns about § 416.994a(e), which describes the limited situations in which disability can be found to have ended even though medical improvement has not occurred. The commenter believed that each "exception" appeared to be our attempt to "circumvent [our] legal burden to show that a recipient's impairment has medically improved." The commenter asserted that the statement in the regulation that there can be a lessening or absence of functional limitations without any decrease in the severity of

the underlying impairment was, "on its face, absurd." The commenter thought that if there has been no medically determinable improvement in the underlying impairment, by definition, the resulting functional limitations cannot have changed. The commenter further stated that the second exception, in which the claimant never should have been found disabled, was an "illegal" reopening and revision of our previous final determination or decision.

*Response:* The first sentence of § 416.994a(e) explains that "[t]he law provides certain limited situations when [a child's] disability can be found to have ended even though medical improvement has not occurred." The provisions in this regulation section are required by, and consistent with, section 1614(a)(4)(B) and (C) of the Act.

The commenter's second assertion was unclear. There is no statement in § 416.994a(e) or elsewhere in § 416.994a that there can be "a lessening or absence of functional limitations without any decrease in the severity of the underlying impairment."

The commenter also seems to have misunderstood the intent of the provisions in §§ 416.1487 through 416.1493 of our regulations. Those provisions allow us to reopen and revise determinations and decisions so that we can change the original determination or decision retroactively. The provisions in § 416.994a(e) generally do not affect a child's eligibility in prior months the way a reopening would. They simply provide a basis in certain rare instances for ceasing eligibility when there has not been medical improvement. In such cases, we find that disability ends in the month specified by the provisions of § 416.994a(g), usually not earlier than the month in which we mail the child and his or her family a notice saying that the information we have shows that the child is not disabled.

*Comment:* One commenter expressed concern that the medical improvement rules seem to "reward" children who receive higher levels of service. The commenter pointed out that children who are severely emotionally disturbed are at particular risk of having their benefits ceased because, given the short-term nature of mental health services, problems may improve and services may be terminated before the problem is addressed.

*Response:* As we have long indicated in § 416.994a(c)(3), we do consider the fact that some impairments are subject to temporary remissions, which can give the appearance of medical improvement when in fact there has been none. This section further explains that, with these

kinds of impairments, we will consider the longitudinal history of the impairment, including the occurrence of prior remissions or the prospect for a future worsening of the impairment when we decide whether there has been medical improvement. Even if there has been medical improvement, however, this does not necessarily mean that a child's benefits will cease. We must still determine whether the child is currently disabled despite medical improvement.

*Comment:* One commenter asked us to include psychiatric management with medical management in § 416.994a(i)(2)(i) instead of grouping it with psychological and psychosocial counseling in § 416.994a(i)(2)(ii). The commenter noted that psychiatric patient management includes medication management as well as other medical evaluation and management services.

*Response:* We adopted the comment by deleting the word "psychiatric" from § 416.994a(i)(1)(ii).

*Comment:* Several commenters expressed concern about how we would interpret the requirement to show "treatment that is medically necessary and available." They recommended that we provide examples and guidance to ensure that the provision is applied consistently. One commenter noted that the concept of "medical necessity" is very controversial within Medicaid managed care programs for children with special health care needs. The commenter recommended that we change the wording in § 416.994a(i)(1) from "improve and [sic] restore" to "maintain or restore" and provide examples of treatment that would be considered medically necessary under this provision.

*Response:* These comments were submitted before we implemented the treatment requirement of the law. Since that time, we have issued very detailed operating instructions that address the concerns the commenters raised.

The comment regarding "medical maintenance" raises a point that is more germane to access to medical care than to the purpose of the treatment provision. We did not adopt the suggested wording change because we believe that the original wording better reflects the intent of the law. We also did not adopt the suggestion that we add examples of treatment that we consider medically necessary because the appropriate and available level and type of treatment will vary for each child.

*Comment:* One commenter asked if school-based behavioral or mental health interventions are considered evidence that a representative payee

must present to show the child is and has been receiving treatment considered medically necessary and available. If so, the commenter recommended that we clarify this section to include school-based interventions.

*Response:* Although we may consider school-based treatment to be treatment that is "medically necessary and available," we did not adopt the comment. Children may receive medical management, psychological or psychosocial counseling, and various kinds of therapy in a school setting. To that extent, we would consider that a payee has satisfied the requirement for showing that the child is receiving the appropriate treatment under the examples we provided in the interim final rules, as modified by these final rules. However, we do not want to give the impression that everything a child may do in school can be a requirement under this section, which we believe would be too much of a burden on families and would go beyond the intent of the statute. Therefore, we chose not to single out therapy received in a school setting in the final rules.

#### Other Comments

*Comment:* Several commenters expressed disagreement with the statute itself. One believed the law appeared to be an attempt to "get around" the Supreme Court's 1990 decision in *Zebley* and wondered how the Court would rule on this new law.

*Response:* The issue the Supreme Court addressed in *Zebley* was whether we had correctly interpreted the prior statutory standard of "comparable severity." Nothing in the *Zebley* decision, however, precluded Congress from revising the definition of disability for children.

A Supreme Court decision construing a statute does not freeze the law and preclude Congress from later amending the statute, as the commenter seemed to assume. Indeed, the Supreme Court has recognized that "Congress frequently 'responds' to judicial decisions construing statutes, and does so for a variety of reasons," and noted that according to one commentator, between 1967 and 1990, Congress "overrode" Supreme Court decisions at an average of 10 per Congress. *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 305 n.5 (1994) (citing Eskridge, *Overriding Supreme Court Statutory Interpretation Decisions*, 101 Yale L. J. 331, 338 (1991)).

*Comment:* One commenter noted that the rules appeared too cumbersome and complex, used too many legal words, and needed to be simplified and structured to be more user-friendly.

Another thought that the complex language and the structure of the regulations were inconsistent with the "plain language" goal and simplification efforts of the Agency. This commenter also believed the rules in general lacked basic clarity, and that we needed to eliminate the "unnecessary" differences in wording between the mental impairment listings for children and for adults.

*Response:* We adopted most of these comments. We revised several of the interim final rules to make them clearer and to use "plain language" as much as possible. These changes are not substantive changes from the interim final rules, only clarifications. Also, as explained earlier in this preamble, we simplified and restructured prior §§ 416.924a through 416.924c into final §§ 416.924a and 416.924b and simplified the rules on functional equivalence.

We did not adopt the comment that asked us to revise both the adult and childhood mental disorders listings to eliminate "unnecessary" differences. The only changes we made to the childhood mental disorders listings in the prior rules were to reflect changes mandated by Pub. L. 104-193. We do not have authority under the Administrative Procedure Act to make the type of extensive changes suggested by the commenters to these other rules without first proposing such changes to the public in a notice of proposed rulemaking.

*Comment:* A number of commenters suggested ways that we could provide information to families, advocacy groups, medical and other professionals, and State agency personnel who work on behalf of children with disabilities. The commenters made a number of suggestions for how we could do this.

*Response:* Although the comments did not address the prior rules, we thought that some of the ideas were very good, and have kept them in mind as we provided public information over the years since we published the prior rules. We will also consider some of the specific ideas for future use.

*Comment:* One commenter asked if we had consulted with members of the Federal Interagency Coordinating Council (FICC), which coordinates policy for young children with disabilities, to benefit from their expertise as we developed the rules.

*Response:* We are a member of and active participant in the FICC. The FICC is established under 20 U.S.C. 1444 (as amended by Pub. L. 105-17, the Individuals with Disabilities Education Act Amendments of 1997, 111 Stat. 37, 121). Among other things, the FICC

ensures the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies.

We agree that the FICC has a wealth of expertise on disability issues for young children. We believe our involvement with the FICC has provided us with further insight into childhood disability issues and has positively influenced our decision to make some of the changes in these final rules.

*Comment:* Several commenters expressed regret that we developed the regulations quickly and without consulting with child-serving professionals, especially regarding the development of age categories and the selection of tests to evaluate functional limitations. One commenter offered to participate. Another commenter said a more deliberative process that used the workgroup concept that we had employed in the past would have been a better mechanism for developing rules that will have such a significant effect on the lives of poor children.

*Response:* Most of the changes to the childhood disability program made by Pub. L. 104-193 were made effective on enactment, or within a short time after enactment, without regard to whether regulations had been issued to implement the provisions. In addition, section 215 of Pub. L. 104-193, 110 Stat. 2105, 2196, required us to issue regulations within 3 months after the date of enactment of the law. Since many provisions were effective without regard to whether we had issued regulations, and since Congress required timely implementation of the changes to the childhood program, we had to act quickly.

As we explained earlier in this preamble, however, we also took a number of actions, such as the "top-to-bottom" review, to ensure that we implemented the changes to the childhood disability program fairly, in a manner consistent with the law. In addition, as noted in the supplementary information section, we asked a number of individual experts for information as we formulated these final rules. We believe that our actions have addressed the commenters' concerns.

*Comment:* Several commenters said that we must adequately train physicians and psychologists who perform consultative examinations to assess and document all of a child's areas of functioning and development and to determine any impairment-related restrictions. Several other commenters thought we should help the medical community and psychologists by providing them with written training

materials and seminars explaining the term "functional equivalence" to help them in responding to requests for information.

*Response:* Physicians, psychologists, and other health care professionals who perform consultative examinations are required to conduct testing in accordance with standard medical practice, including testing and evaluation of abilities or functioning in childhood cases where appropriate. Professional relations officers employed by the State agencies train consultative examiners where possible.

We also provide information to the medical community and to psychologists by distributing literature and training materials and exhibiting at numerous medical conventions each year. Our medical and psychological consultants are often available at these conventions to answer specific questions from other doctors or other attendees.

We also sponsor and present continuing medical education seminars at select medical conventions. These activities are all directed towards educating physicians, psychologists, and other professionals so that they can provide us with the evidence we need to make a decision on a claim.

Publications for health professionals are listed in the "Social Security Disability Public Information Products List." (SSA Publication No. 64-065). This list can be ordered by calling 410-965-0945, sending a request by fax to 410-965-0696, or sending a written request to: Public Information Distribution Center, P.O. Box 17743, Baltimore, Maryland 21235-7743.

Finally, we plan to produce a new training package on SSI childhood disability for medical professionals in 2001.

*Comment:* Several commenters recommended that we provide uniform guidance and training at all levels of the administrative review process to emphasize the importance of using all relevant evidence in making eligibility determinations, and to ensure a consistent developmental and adjudicative outcome to the extent possible.

*Response:* We agreed with these comments. Administrative law judges and the Appeals Council use the regulations and SSRs when they make decisions, but State agencies, quality reviewers, and other adjudicators use the Program Operations Manual System, or POMS, which are based on and consistent with the regulations and rulings. To ensure that everyone used the same, exact instructions, we printed the text of the interim final rules

verbatim in the POMS and will do the same with these final rules.

Likewise, we provided the same training to all our adjudicators when we first implemented the rules in 1997 and in training classes we conducted in 1998 in response to our findings in the top-to-bottom review. As noted earlier in this preamble, we issued manuals for two of these training classes. The training manuals went to all adjudicators at all levels of the process. We also issued SSR 98-1p in 1998 to address the evaluation of speech and cognition, and it is printed verbatim in the POMS.

Under our Process Unification initiative, these actions are not unusual or confined to childhood disability issues. For several years, we have published all of our new regulations and SSRs for adults and children verbatim in the POMS, and whenever appropriate provided uniform national training to all adjudicators.

*Comment:* Some commenters thought that the 1-year period for redetermining the eligibility of children who might lose eligibility because of the changes in Pub. L. 104-193 was too short. They stated that because the regulations would be difficult and time-consuming to apply, case processing time, quality, and staff commitment would be adversely affected. They were concerned that the State agencies and administrative law judges would be pressured to make up time lost during the regulatory process and be blamed for falling behind in case dispositions, resulting in hasty decisions. One commenter was concerned that the deadline would not give recipients adequate time to get information needed to show that a child meets the eligibility criteria or time to adjust to a loss of benefits resulting in reduced family income.

*Response:* As we noted at the beginning of this preamble, the requirement to perform the redeterminations within 1 year of enactment was a provision in Pub. L. 104-193. However, subsequent amendments to the law have largely addressed this concern. Section 5101 of Pub. L. 105-33, 111 Stat. 251, 595, extended the period from 1 year to 18 months after enactment of Pub. L. 104-193, and also provided that any redetermination not performed within that time could be performed as soon as practicable thereafter. Therefore, we had more time to do the redeterminations than the commenters assumed.

We also explained earlier in this preamble that we considered in the top-to-bottom review of the childhood disability program the concerns that the

State agencies might have rushed redeterminations to meet the original August 22, 1997, deadline. We found that these concerns were largely unfounded, but we realize that the comments were sent in just after we published the interim final rules and before we had completed a significant number of redeterminations. However, we did take actions, already described, to address issues about the accuracy of some determinations. We have also explained in earlier responses the efforts we make to help families get evidence.

*Comment:* Several commenters were concerned about families' ability to appeal a redetermination that resulted in a finding of ineligibility and still retain Medicaid, because of the short time in which parents had to appeal adverse determinations. The commenters suggested that we and the Health Care Financing Administration (HCFA) give clear guidelines to families about when they would have to repay cash and Medicaid benefits received during the appeal period if their appeal was denied. Several commenters recommended that Medicaid coverage should be guaranteed for those children with mental, emotional, and behavioral problems who lose their eligibility.

*Response:* This issue also has been resolved by subsequent legislation and actions we took based on our top-to-bottom review. Section 4913 of Pub. L. 105-33, 111 Stat. 251, 573, added a provision to continue Medicaid for children who lost eligibility for SSI as a result of a redetermination under Pub. L. 104-193. In addition, we have worked closely with HCFA, the agency that administers Medicaid and is responsible for implementing this change in the law. We have periodically provided lists to the Medicaid State agencies to ensure proper identification of the children who are eligible for continued Medicaid coverage under Pub. L. 105-33.

On April 7, 2000, HCFA also sent a letter to State Medicaid directors reminding them of the effects of the changes and requiring them to take certain actions. Interested readers may see the letter at [www.hcfa.gov/medicaid/smd40700.htm](http://www.hcfa.gov/medicaid/smd40700.htm).

We understood the concern that our redetermination notices might have been confusing, so in 1998 we sent supplementary notices in simpler language to families (or other payees). These new notices explained that they had another chance to request a reconsideration and also gave families a new 10-day period to request benefit continuation during an appeal. We also took several actions, explained at the beginning of this preamble, to make sure

that families better understood their rights to ask for waiver of any overpayment that might result from the request.

*Comment:* Several commenters recommended that we instruct State agencies to postpone completing cases during the summer if school records are unavailable.

*Response:* We did not adopt the comment. State agencies already have the authority to postpone their determination in any case until information they need is available. However, when sufficient information can be obtained from other sources to make a correct determination, it would not be in the best interest of children and families to require the State agencies to delay their determinations.

*Comment:* One commenter thought we should not apply the new regulations to claims that were pending on August 22, 1996, when Pub. L. 104-193 was enacted, because children had no control over the timing of determinations or decisions on their claims. This commenter suggested that we apply the regulations only to claims filed after the date of enactment.

*Response:* We did not adopt the comment. Section 211(d)(1)(A) of Pub. L. 104-193, 110 Stat. 2105, 2190, provided that the changes to the childhood disability standard applied to any individual "who applies for, or whose claim is finally adjudicated \* \* \* on or after the date of the enactment of this Act." The statute also provided that no individual's claim may be considered to be finally adjudicated before the date of enactment if, on or after August 22, 1996, there is a request pending for administrative or judicial review of a claim that has been denied in whole.

*Comment:* Several commenters suggested that we provide information to policymakers about the impact of the new childhood disability regulations by presenting program data and implementing a comprehensive research plan. They recommended that we track what happens to a sample of children who lose benefits as a result of the new rules. Other commenters wanted us to report annually to Congress and the public on the number of children who lost eligibility and Medicaid coverage as a result of the redetermination of their eligibility. Others urged us to make use of techniques and sources of information already used by the Department of Health and Human Services and some States in similar research programs.

*Response:* We maintain detailed program data on all cases affected by the revisions to the childhood disability

regulations. If program data indicate experience that is unexpected, we undertake case reviews to ensure that our policies are being applied correctly. Periodically, we compile program data into a comprehensive report and share it with interested parties, such as Congressional staff, advocates, and researchers. In addition, we report overall program experience to the Congress in the Annual Report of the Supplemental Security Income Program. This report contains information on the number of applications filed, the rate of allowances, expenditures, and appellate experience for SSI children and adults.

To assess the effect of the legislative change in the definition of disability for children, we contracted with the RAND Corporation for a three-phase evaluation. The first phase was an analysis of administrative data to assess the characteristics of the children affected by the legislation. The second phase included field visits with SSA employees, State Medicaid workers, advocates, claimant representatives, and educators to assess implementation of the legislation. The final phase of the evaluation involves the longitudinal tracking of individual families to assess how the loss of the child's SSI eligibility affects the overall family and child. As noted above, Congress enacted legislation in 1997 to ensure that children whose eligibility for SSI was ceased based on a redetermination under Pub. L. 104-193 did not lose Medicaid eligibility.

*Comment:* One commenter addressed the special SSI status permitted for adults who begin or return to work despite their disability. The commenter referred to "§ 416.20" of our regulations and recommended that we include a comparable exception for children who may have difficulty returning to school or advancing to a more progressive class/program due to their disabling impairments.

*Response:* There is no § 416.20 in our regulations, but we believe the commenter may have been referring to § 416.260. That regulation, and several that follow it, explain how we

implement sections 1619(a) and 1619(b) of the Act. These sections provide for a special SSI cash benefit for people who still have disabling impairments but who are working and engage in substantial gainful activity, and for continuing Medicaid eligibility for disabled individuals whose earnings are too high to receive SSI payments.

The commenter did not explain how she thought the provisions should be applied to children who may have difficulty returning to school or advancing in school. When such children have disabling impairments, they qualify for SSI as long as they meet the other eligibility requirements, including the limitations on income and resources. Without a change in the Act, we do not have the authority to disregard the income requirements as recommended by the commenter.

#### Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. For the reasons that follow, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures with respect to the changes we are making to §§ 416.987(c) and 416.990(b)(11) to reflect the provisions of sections 5522(a)(1) and 5522(a)(2)(B) of Pub. L. 105-33, the Balanced Budget Act of 1997.

Section 5522(a)(1) of Pub. L. 105-33 amended section 1614(a)(3)(H)(iii) of the Act to provide that we will do a redetermination of the disability eligibility of children who attain age 18 "either during the 1-year period beginning on the individual's 18th birthday or, in lieu of a continuing

disability review, whenever the Commissioner determines that an individual's case is subject to a redetermination under this clause." Section 5522(a)(2)(B) amended section 1614(a)(3)(H)(iv)(VI) of the Act to provide that we do not have to do a CDR by age 1 for a child for whom low birth weight is a contributing factor material to our determination of disability if we determine at the time of our initial disability determination that the child's impairment(s) is not expected to improve by age 1 and we schedule a CDR later than age 1.

Because the language of the statutory provisions added by these amendments does not provide for any discretionary policy, we have determined that the use of notice-and-comment rulemaking procedures for the issuance of rules to reflect these statutory provisions is unnecessary. On this basis, we find that good cause exists for dispensing with such procedures. Accordingly, we find that prior notice and comment are unnecessary with respect to these specific changes made to the rules.

#### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final regulations meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Therefore, we prepared and submitted to OMB the following assessment of the potential costs and benefits of this regulatory action. We have also determined that these rules meet the plain language requirement of E.O. 12866 and the President's memorandum of June 1, 1998 (63 FR 31885).

The potential costs and benefits for the policies reflected in these final rules follow:

#### Program Costs

It is estimated that due to these final rules there would be increased program outlays resulting in the following costs (in millions of dollars) to the SSI program (\$215 million Total in a 5-year period):

FY2001	FY2002	FY2003	FY2004	FY2005	Total
\$5	\$25	\$45	\$60	\$75	\$215

The following is the estimated Total program outlay (in millions of dollars) for SSI childhood disability benefits (which includes the increases shown above):

FY2001	FY2002	FY2003	FY2004	FY2005	Total
\$5123	\$5478	\$5807	\$6090	\$6841	\$29339

**Note:** Annual numbers may not add to Total due to rounding.  
It is also estimated that there will be an increase in Medicaid program outlays.  
The estimated increased Federal Medicaid costs are:

FY2001	FY2002	FY2003	FY2004	FY2005	Total
\$2	\$8	\$15	\$22	\$29	\$76

There will also be increased Medicaid program outlays for States.

#### Administrative Costs and Savings

The administrative costs associated with the final rules are attributable to the cost of implementation training and the cost of post-eligibility actions for an

increased number of childhood recipients. Training costs are all in FY 2001 and Total \$1,628,000.

Ongoing Federal administrative costs are workyear costs based on increased workloads as a result of the additional children who will be allowed under

these final rules. There will be additional income and resource redeterminations, representative payee actions, and maintenance of the rolls activities.

Estimated administrative costs (\$ in millions):

FY2001	FY2002	FY2003	FY2004	FY2005	Total
\$1.8	\$ .7	\$1.1	\$1.5	\$1.9	\$6.9

**Note:** Annual numbers may not add to Total due to rounding.

#### Increase in SSI Recipients

The following figures show the estimated annual increase (in thousands) from these final rules on the projected numbers of recipients of Federal SSI benefits:

FY2001	FY2002	FY2003	FY2004	FY2005	Total
1	5	8	11	14	39

With the increase in SSI recipients shown above, we estimate that the average number of disabled children (in thousands) in payment status after implementation of these final rules will be:

FY2001	FY2002	FY2003	FY2004	FY2005
832	864	888	906	922

#### Unfunded Mandates Reform Act of 1995

These final rules do not impose any Federal mandates that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. Therefore, the statement described in section 202 of Pub. L. 104-4, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), is not required.

#### Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### Paperwork Reduction Act

These final regulations impose no new reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.006 Supplemental Security Income)

#### List of Subjects

##### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

##### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 27, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, interim final rules amending 20 CFR chapter III which were published at 62 FR 6408 and corrected at 62 FR 13537 and 62 FR 13733 are adopted as final rules with the following changes:

#### PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )

##### Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

##### Appendix 1 to Subpart P—[Amended]

2. Part B of Appendix 1 (Listing of Impairments) of subpart P to part 404 is amended by revising the third sentence of the third paragraph of 103.00A, the second sentence of the fifth paragraph of 103.00A, the fourth sentence of the fifth paragraph of 104.00A, the second sentence of the sixth paragraph of 104.00A, the second sentence of the ninth paragraph of 112.00A, and the second sentence of the third paragraph of 112.00C to read as follows:

**Appendix 1 to Subpart P—Listing of Impairments**

\* \* \* \*

**Part B**

\* \* \* \*

**103.00 Respiratory System****A. \* \* \***

\* \* \* \*

\* \* \* Even if a child does not show that his or her impairment meets the criteria of these listings, the child may have an impairment(s) that medically or functionally equals the listings.

\* \* \*

\* \* \* \*

\* \* \* When a child has a medically determinable impairment that is not listed, an impairment that does not meet the requirements of a listing, or a combination of impairments no one of which meets the requirements of a listing, we will make a determination whether the child's impairment(s) medically or functionally equals the listings.

\* \* \*

**104.00 Cardiovascular System****A. Introduction**

\* \* \* \*

\* \* \* Even though a child who does not receive treatment may not be able to show an impairment that meets the criteria of these listings, the child may have an impairment(s) that medically or functionally equals the listings.

\* \* \* When a child has a medically determinable impairment that is not listed, an impairment that does not meet the requirements of a listing, or a combination of impairments no one of which meets the requirements of a listing, we will make a determination whether the child's impairment(s) medically or functionally equals the listings.

\* \* \*

**112.00 Mental Disorders****A. \* \* \***

\* \* \* \*

\* \* \* When a child has a medically determinable impairment that is not listed, an impairment that does not meet the requirements of a listing, or a combination of impairments no one of which meets the requirements of a listing, we will make a determination whether the child's impairment(s) medically or functionally equals the listings.

**C. \* \* \***

\* \* \* \*

\* \* \* If the infant or toddler was born prematurely, however, we will

follow the rules in § 416.924b(b) to determine whether we should use the infant's or toddler's corrected chronological age; i.e., the chronological age adjusted by the period of gestational prematurity.

\* \* \* \*

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED****Subpart I—[Amended]**

3. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a) and 15, Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

4. Section 416.901 is amended by revising paragraph (f)(2) as follows:

**§ 416.901 Scope of subpart.**

\* \* \* \*

(f) \* \* \*

(2) What we mean by the terms *medical equivalence* and *functional equivalence* and how we make those findings;

\* \* \* \*

5. Section 416.902 is amended by adding a new definition, "The listings," between the definitions for "Impairment(s)" and "Marked and severe functional limitations," by revising the definition of "Marked and severe functional limitations," and by revising the definition of "You or your" to read as follows:

**§ 416.902 General definitions and terms for this subpart.**

\* \* \* \*

*The listings* means the Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter. When we refer to an impairment(s) that "meets, medically equals, or functionally equals the listings," we mean that the impairment(s) meets or medically equals the severity of any listing in appendix 1 of subpart P of part 404 of this chapter, as explained in §§ 416.925 and 416.926, or that functionally equals the severity of the listings, as explained in § 416.926a.

*Marked and severe functional limitations*, when used as a phrase, means the standard of disability in the Social Security Act for children claiming SSI benefits based on disability. It is a level of severity that meets, medically equals, or functionally equals the listings. (See §§ 416.906,

416.924, and 416.926a.) The words "marked" and "severe" are also separate terms used throughout this subpart to describe measures of functional limitations; the term "marked" is also used in the listings. (See §§ 416.924 and 416.926a.) The meaning of the words "marked" and "severe" when used as part of the phrase *marked and severe functional limitations* is not the same as the meaning of the separate terms "marked" and "severe" used elsewhere in 20 CFR 404 and 416. (See §§ 416.924(c) and 416.926a(e).)

\* \* \* \*

*You, your, me, my* and *I* mean, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

6. Section 416.906 is amended by revising the last sentence to read as follows:

**§ 416.906 Basic definition of disability for children.**

\* \* \* We discuss our rules for determining disability in children who file new applications in §§ 416.924 through 416.924b and §§ 416.925 through 416.926a.

7. Section 416.911(b)(1) is revised to read as follows:

**§ 416.911 Definition of disabling impairment.**

\* \* \* \*

(b) \* \* \*

(1) Must meet, medically equal, or functionally equal the listings, or

\* \* \* \*

8. Section 416.913 is amended by revising paragraphs (c)(3), (d), and (e) to read as follows:

**§ 416.913 Medical and other evidence of your impairment(s).**

\* \* \* \*

(c) \* \* \*

(3) If you are a child, the medical source's opinion about your functional limitations compared to children your age who do not have impairments in acquiring and using information, attending and completing tasks, interacting and relating with others, moving about and manipulating objects, caring for yourself, and health and physical well-being.

(d) *Other sources.* In addition to evidence from the acceptable medical sources listed in paragraph (a) of this section, we may also use evidence from other sources to show the severity of your impairment(s) and how it affects your ability to work or, if you are a

child, how you typically function compared to children your age who do not have impairments. Other sources include, but are not limited to—

(1) Medical sources not listed in paragraph (a) of this section (for example, nurse-practitioners, physicians' assistants, naturopaths, chiropractors, audiologists, and therapists);

(2) Educational personnel (for example, school teachers, counselors, early intervention team members, developmental center workers, and daycare center workers);

(3) Public and private social welfare agency personnel; and

(4) Other non-medical sources (for example, spouses, parents and other caregivers, siblings, other relatives, friends, neighbors, and clergy).

(e) *Completeness*. The evidence in your case record, including the medical evidence from acceptable medical sources (containing the clinical and laboratory findings) and other medical sources not listed in paragraph (a) of this section, information you give us about your medical condition(s) and how it affects you, and other evidence from other sources, must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind. It must allow us to determine—

(1) The nature and severity of your impairment(s) for any period in question;

(2) Whether the duration requirement described in § 416.909 is met; and

(3) Your residual functional capacity to do work-related physical and mental activities, when the evaluation steps described in § 416.920(e) or (f)(1) apply, or, if you are a child, how you typically function compared to children your age who do not have impairments.

\* \* \* \* \*

9. Section 416.919n is amended by revising the third sentence of paragraph (c)(6) to read as follows:

**§ 416.919n Informing the medical source of examination scheduling, report content, and signature requirements.**

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \* If you are a child, this statement should describe the opinion of the medical source about your functional limitations compared to children your age who do not have impairments in acquiring and using information, attending and completing tasks, interacting and relating with others, moving about and manipulating objects, caring for yourself, and health and physical well-being. \* \* \*

\* \* \* \* \*

10. Section 416.924 is amended by adding a new fifth sentence to paragraph (a), revising the prior tenth (now the eleventh) sentence of paragraph (a), revising paragraphs (c) and (d), removing paragraph (f), redesignating paragraph (e) as paragraph (f) and revising that paragraph, and by adding a new paragraph (e), to read as follows:

**§ 416.924 How we determine disability for children.**

(a) \* \* \* We will also consider all of the relevant factors in §§ 416.924a and 416.924b whenever we assess your functioning at any step of this process.

\* \* \* If your impairment(s) is severe, we will review your claim further to see if you have an impairment(s) that meets, medically equals, or functionally equals the listings. \* \* \*

\* \* \* \* \*

(c) *You must have a medically determinable impairment(s) that is severe*. If you do not have a medically determinable impairment, or your impairment(s) is a slight abnormality or a combination of slight abnormalities that causes no more than minimal functional limitations, we will find that you do not have a severe impairment(s) and are, therefore, not disabled.

(d) *Your impairment(s) must meet, medically equal, or functionally equal the listings*. An impairment(s) causes marked and severe functional limitations if it meets or medically equals the severity of a set of criteria for an impairment in the listings, or if it functionally equals the listings.

(1) Therefore, if you have an impairment(s) that meets or medically equals the requirements of a listing or that functionally equals the listings, and that meets the duration requirement, we will find you disabled.

(2) If your impairment(s) does not meet the duration requirement, or does not meet, medically equal, or functionally equal the listings, we will find that you are not disabled.

(e) *Other rules*. We explain other rules for evaluating impairments at all steps of this process in §§ 416.924a, 416.924b, and 416.929. We explain our rules for deciding whether an impairment(s) meets a listing in § 416.925. Our rules for how we decide whether an impairment(s) medically equals a listing are in § 416.926. Our rules for deciding whether an impairment(s) functionally equals the listings are in § 416.926a.

(f) *If you attain age 18 after you file your disability application but before we make a determination or decision*. For the period during which you are under age 18, we will use the rules in this section. For the period starting with the

day you attain age 18, we will use the disability rules we use for adults who file new claims, in § 416.920.

\* \* \* \* \*

**§§ 416.924b and 416.924c [Removed]**

11. Sections 416.924b and 416.924c are removed.

**§ 416.924a [Redesignated as § 416.924b]**

12. Section 416.924a is redesignated as § 416.924b and revised to read as follows:

**§ 416.924b Age as a factor of evaluation in the sequential evaluation process for children.**

(a) *General*. In this section, we explain how we consider age when we decide whether you are disabled. Your age may or may not be a factor in our determination whether your impairment(s) meets or medically equals a listing, depending on the listing we use for comparison. However, your age is an important factor when we decide whether your impairment(s) is severe (see § 416.924(c)) and whether it functionally equals the listings (see § 416.926a). Except in the case of certain premature infants, as described in paragraph (b) of this section, age means chronological age.

(1) When we determine whether you have an impairment or combination of impairments that is severe, we will compare your functioning to that of children your age who do not have impairments.

(2) When we determine whether your impairment(s) meets a listing, we may or may not need to consider your age. The listings describe impairments that we consider of such significance that they are presumed to cause marked and severe functional limitations.

(i) If the listing appropriate for evaluating your impairment is divided into specific age categories, we will evaluate your impairment according to your age when we decide whether your impairment meets that listing.

(ii) If the listing appropriate for evaluating your impairment does not include specific age categories, we will decide whether your impairment meets the listing without giving consideration to your age.

(3) When we compare an unlisted impairment or a combination of impairments with the listings to determine whether it medically equals the severity of a listing, the way we consider your age will depend on the listing we use for comparison. We will use the same principles for considering your age as in paragraphs (a)(2)(i) and (a)(2)(ii) of this section; that is, we will consider your age only if we are

comparing your impairment(s) to a listing that includes specific age categories.

(4) We will also consider your age and whether it affects your ability to be tested. If your impairment(s) is not amenable to formal testing because of your age, we will consider all information in your case record that helps us decide whether you are disabled. We will consider other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice that will help us evaluate the existence and severity of your impairment(s).

(b) *Correcting chronological age of premature infants.* We generally use chronological age (that is, a child's age based on birth date) when we decide whether, or the extent to which, a physical or mental impairment or combination of impairments causes functional limitations. However, if you were born prematurely, we may consider you to be younger than your chronological age. When we evaluate the development or linear growth of a child born prematurely, we may use a "corrected" chronological age; that is, the chronological age adjusted by a period of gestational prematurity. We consider an infant born at less than 37 weeks' gestation to be born prematurely.

(1) We apply a corrected chronological age in these situations—

(i) When we evaluate developmental delay in premature children until the child's prematurity is no longer a relevant factor; generally no later than about chronological age 2 (see paragraph (b)(2) of this section);

(ii) When we evaluate an impairment of linear growth, such as under the listings in § 100.00 in appendix 1 of subpart P of part 404 of this chapter, until the child is 12 months old. In this situation, we refer to neonatal growth charts which have been developed to evaluate growth in premature infants (see paragraph (b)(2) of this section).

(2) We compute a corrected chronological age as follows—

(i) If you have not attained age 1, we will correct your chronological age. We compute the corrected chronological age by subtracting the number of weeks of prematurity (*i.e.*, the difference between 40 weeks of full-term gestation and the number of actual weeks of gestation) from your chronological age. The result is your corrected chronological age.

(ii) If you are over age 1, have a developmental delay, and prematurity is still a relevant factor in your case (generally, no later than about chronological age 2), we will decide whether to correct your chronological age. Our decision will be based on our

judgment and all the facts of your case. If we decide to correct your chronological age, we may correct it by subtracting the full number of weeks of prematurity or a lesser number of weeks. We will also decide not to correct your chronological age if we can determine from the evidence that your developmental delay is the result of your medically determinable impairment(s) and is not attributable to your prematurity.

(3) Notwithstanding the provisions in paragraph (b)(1) of this section, we will not compute a corrected chronological age if the medical evidence shows that your treating source or other medical source has already taken your prematurity into consideration in his or her assessment of your development. Also, we will not compute a corrected chronological age when we find you disabled using the examples of functional equivalence based on low birth weight in § 416.924a(m)(7) or (8).

13. A new § 416.924a is added to read as follows:

**§ 416.924a Considerations in determining disability for children.**

(a) *Basic considerations.* We consider all relevant information (*i.e.*, evidence) in your case record. The evidence in your case record may include information from medical sources, such as your pediatrician, other physician, psychologist, or qualified speech-language pathologist; other medical sources not listed in § 416.913(a), such as physical, occupational, and rehabilitation therapists; and nonmedical sources, such as your parents, teachers, and other people who know you.

(1) *Medical evidence.* (i) *General.* Medical evidence of your impairment(s) must describe symptoms, signs, and laboratory findings. The medical evidence may include, but is not limited to, formal testing that provides information about your development or functioning in terms of standard deviations, percentiles, percentages of delay, or age or grade equivalents. It may also include opinions from medical sources about the nature and severity of your impairments. (See § 416.927.)

(ii) *Test scores.* We consider all of the relevant information in your case record and will not consider any single piece of evidence in isolation. Therefore, we will not rely on test scores alone when we decide whether you are disabled. (See § 416.926a(e) for more information about how we consider test scores.)

(iii) *Medical sources.* Medical sources will report their findings and observations on clinical examination and the results of any formal testing. A

medical source's report should note and resolve any material inconsistencies between formal test results, other medical findings, and your usual functioning. Whenever possible and appropriate, the interpretation of findings by the medical source should reflect consideration of information from your parents or other people who know you, including your teachers and therapists. When a medical source has accepted and relied on such information to reach a diagnosis, we may consider this information to be a clinical sign, as defined in § 416.928(b).

(2) *Information from other people.*

Every child is unique, so the effects of your impairment(s) on your functioning may be very different from the effects the same impairment(s) might have on another child. Therefore, whenever possible and appropriate, we will try to get information from people who can tell us about the effects of your impairment(s) on your activities and how you function on a day-to-day basis. These other people may include, but are not limited to:

(i) *Your parents and other caregivers.*

Your parents and other caregivers can be important sources of information because they usually see you every day. In addition to your parents, other caregivers may include a childcare provider who takes care of you while your parent(s) works or an adult who looks after you in a before-or after-school program.

(ii) *Early intervention and preschool programs.* If you have been identified for early intervention services (in your home or elsewhere) because of your impairment(s), or if you attend a preschool program (*e.g.*, Headstart or a public school kindergarten for children with special needs), these programs are also important sources of information about your functioning. We will ask for reports from the agency and individuals who provide you with services or from your teachers about how you typically function compared to other children your age who do not have impairments.

(iii) *School.* If you go to school, we will ask for information from your teachers and other school personnel about how you are functioning there on a day-to-day basis compared to other children your age who do not have impairments. We will ask for any reports that the school may have that show the results of formal testing or that describe any special education instruction or services, including home-based instruction, or any accommodations provided in a regular classroom.

(b) *Factors we consider when we evaluate the effects of your impairment(s) on your functioning.*

(1) *General.* We must consider your functioning when we decide whether your impairment(s) is "severe" and when we decide whether your impairment(s) functionally equals the listings. We will also consider your functioning when we decide whether your impairment(s) meets or medically equals a listing if the listing we are considering includes functioning among its criteria.

(2) *Factors we consider when we evaluate your functioning.* Your limitations in functioning must result from your medically determinable impairment(s). The information we get from your medical and nonmedical sources can help us understand how your impairment(s) affects your functioning. We will also consider any factors that are relevant to how you function when we evaluate your impairment or combination of impairments. For example, your symptoms (such as pain, fatigue, decreased energy, or anxiety) may limit your functioning. (See § 416.929.) We explain some other factors we may consider when we evaluate your functioning in paragraphs (b)(3)–(b)(9) of this section.

(3) *How your functioning compares to the functioning of children your age who do not have impairments.* (i) *General.* When we evaluate your functioning, we will look at whether you do the things that other children your age typically do or whether you have limitations and restrictions because of your medically determinable impairment(s). We will also look at how well you do the activities and how much help you need from your family, teachers, or others. Information about what you can and cannot do, and how you function on a day-to-day basis at home, school, and in the community, allows us to compare your activities to the activities of children your age who do not have impairments.

(ii) *How we will consider reports of your functioning.* When we consider the evidence in your case record about the quality of your activities, we will consider the standards used by the person who gave us the information. We will also consider the characteristics of the group to whom you are being compared. For example, if the way you do your classwork is compared to other children in a special education class, we will consider that you are being compared to children who do have impairments.

(4) *Combined effects of multiple impairments.* If you have more than one

impairment, we will sometimes be able to decide that you have a "severe" impairment or an impairment that meets, medically equals, or functionally equals the listings by looking at each of your impairments separately. When we cannot, we will look comprehensively at the combined effects of your impairments on your day-to-day functioning instead of considering the limitations resulting from each impairment separately. (See §§ 416.923 and 416.926a(c) for more information about how we will consider the interactive and cumulative effects of your impairments on your functioning.)

(5) *How well you can initiate, sustain, and complete your activities, including the amount of help or adaptations you need, and the effects of structured or supportive settings.* (i) *Initiating, sustaining, and completing activities.*

We will consider how effectively you function by examining how independently you are able to initiate, sustain, and complete your activities despite your impairment(s), compared to other children your age who do not have impairments. We will consider:

- (A) The range of activities you do;
- (B) Your ability to do them independently, including any prompting you may need to begin, carry through, and complete your activities;
- (C) The pace at which you do your activities;
- (D) How much effort you need to make to do your activities; and
- (E) How long you are able to sustain your activities.

(ii) *Extra help.* We will consider how independently you are able to function compared to other children your age who do not have impairments. We will consider whether you need help from other people, or whether you need special equipment, devices, or medications to perform your day-to-day activities. For example, we may consider how much supervision you need to keep from hurting yourself, how much help you need every day to get dressed or, if you are an infant, how long it takes for your parents or other caregivers to feed you. We recognize that children are often able to do things and complete tasks when given help, but may not be able to do these same things by themselves. Therefore, we will consider how much extra help you need, what special equipment or devices you use, and the medications you take that enable you to participate in activities like other children your age who do not have impairments.

(iii) *Adaptations.* We will consider the nature and extent of any adaptations that you use to enable you to function. Such adaptations may include assistive

devices or appliances. Some adaptations may enable you to function normally or almost normally (e.g., eyeglasses). Others may increase your functioning, even though you may still have functional limitations (e.g., ankle-foot orthoses, hand or foot splints, and specially adapted or custom-made tools, utensils, or devices for self-care activities such as bathing, feeding, toileting, and dressing). When we evaluate your functioning with an adaptation, we will consider the degree to which the adaptation enables you to function compared to other children your age who do not have impairments, your ability to use the adaptation effectively on a sustained basis, and any functional limitations that nevertheless persist.

(iv) *Structured or supportive settings.*

(A) If you have a serious impairment(s), you may spend some or all of your time in a structured or supportive setting, beyond what a child who does not have an impairment typically needs.

(B) A structured or supportive setting may be your own home in which family members or other people (e.g., visiting nurses or home health workers) make adjustments to accommodate your impairment(s). A structured or supportive setting may also be your classroom at school, whether it is a regular classroom in which you are accommodated or a special classroom. It may also be a residential facility or school where you live for a period of time.

(C) A structured or supportive setting may minimize signs and symptoms of your impairment(s) and help to improve your functioning while you are in it, but your signs, symptoms, and functional limitations may worsen outside this type of setting. Therefore, we will consider your need for a structured setting and the degree of limitation in functioning you have or would have outside the structured setting. Even if you are able to function adequately in the structured or supportive setting, we must consider how you function in other settings and whether you would continue to function at an adequate level without the structured or supportive setting.

(D) If you have a chronic impairment(s), you may have your activities structured in such a way as to minimize stress and reduce the symptoms or signs of your impairment(s). You may continue to have persistent pain, fatigue, decreased energy, or other symptoms or signs, although at a lesser level of severity. We will consider whether you are more limited in your functioning than your symptoms and signs would indicate.

(E) Therefore, if your symptoms or signs are controlled or reduced in a structured setting, we will consider how well you are functioning in the setting and the nature of the setting in which you are functioning (e.g., home or a special class); the amount of help you need from your parents, teachers, or others to function as well as you do; adjustments you make to structure your environment; and how you would function without the structured or supportive setting.

(6) *Unusual settings.* Children may function differently in unfamiliar or one-to-one settings than they do in their usual settings at home, at school, in childcare or in the community. You may appear more or less impaired on a single examination (such as a consultative examination) than indicated by the information covering a longer period. Therefore, we will apply the guidance in paragraph (b)(5) of this section when we consider how you function in an unusual or one-to-one situation. We will look at your performance in a special situation and at your typical day-to-day functioning in routine situations. We will not draw inferences about your functioning in other situations based only on how you function in a one-to-one, new, or unusual situation.

(7) *Early intervention and school programs.* (i) *General.* If you are a very young child who has been identified for early intervention services, or if you attend school (including preschool), the records of people who know you or who have examined you are important sources of information about your impairment(s) and its effects on your functioning. Records from physicians, teachers and school psychologists, or physical, occupational, or speech-language therapists are examples of what we will consider. If you receive early intervention services or go to school or preschool, we will consider this information when it is relevant and available to us.

(ii) *School evidence.* If you go to school or preschool, we will ask your teacher(s) about your performance in your activities throughout your school day. We will consider all the evidence we receive from your school, including teacher questionnaires, teacher checklists, group achievement testing, and report cards.

(iii) *Early intervention and special education programs.* If you have received a comprehensive assessment for early intervention services or special education services, we will consider information used by the assessment team to make its recommendations. We will consider the information in your Individualized Family Service Plan,

your Individualized Education Program, or your plan for transition services to help us understand your functioning. We will examine the goals and objectives of your plan or program as further indicators of your functioning, as well as statements regarding related services, supplementary aids, program modifications, and other accommodations recommended to help you function, together with the other relevant information in your case record.

(iv) *Special education or accommodations.* We will consider the fact that you attend school, that you may be placed in a special education setting, or that you receive accommodations because of your impairments along with the other information in your case record. The fact that you attend school does not mean that you are not disabled. The fact that you do or do not receive special education services does not, in itself, establish your actual limitations or abilities. Children are placed in special education settings, or are included in regular classrooms (with or without accommodation), for many reasons that may or may not be related to the level of their impairments. For example, you may receive one-to-one assistance from an aide throughout the day in a regular classroom, or be placed in a special classroom. We will consider the circumstances of your school attendance, such as your ability to function in a regular classroom or preschool setting with children your age who do not have impairments. Similarly, we will consider that good performance in a special education setting does not mean that you are functioning at the same level as other children your age who do not have impairments.

(v) *Attendance and participation.* We will also consider factors affecting your ability to participate in your education program. You may be unable to participate on a regular basis because of the chronic or episodic nature of your impairment(s) or your need for therapy or treatment. If you have more than one impairment, we will look at whether the effects of your impairments taken together make you unable to participate on a regular basis. We will consider how your temporary removal or absence from the program affects your ability to function compared to other children your age who do not have impairments.

(8) *The impact of chronic illness and limitations that interfere with your activities over time.* If you have a chronic impairment(s) that is characterized by episodes of exacerbation (worsening) and remission

(improvement), we will consider the frequency and severity of your episodes of exacerbation as factors that may be limiting your functioning. Your level of functioning may vary considerably over time. Proper evaluation of your ability to function in any domain requires us to take into account any variations in your level of functioning to determine the impact of your chronic illness on your ability to function over time. If you require frequent treatment, we will consider it as explained in paragraph (b)(9)(ii) of this section.

(9) *The effects of treatment (including medications and other treatment).* We will evaluate the effects of your treatment to determine its effect on your functioning in your particular case.

(i) *Effects of medications.* We will consider the effects of medication on your symptoms, signs, laboratory findings, and functioning. Although medications may control the most obvious manifestations of your impairment(s), they may or may not affect the functional limitations imposed by your impairment(s). If your symptoms or signs are reduced by medications, we will consider:

(A) Any of your functional limitations that may nevertheless persist, even if there is improvement from the medications;

(B) Whether your medications create any side effects that cause or contribute to your functional limitations;

(C) The frequency of your need for medication;

(D) Changes in your medication or the way your medication is prescribed; and  
(E) Any evidence over time of how medication helps or does not help you to function compared to other children your age who do not have impairments.

(ii) *Other treatment.* We will also consider the level and frequency of treatment other than medications that you get for your impairment(s). You may need frequent and ongoing therapy from one or more medical sources to maintain or improve your functional status. (Examples of therapy include occupational, physical, or speech and language therapy, nursing or home health services, psychotherapy, or psychosocial counseling.) Frequent therapy, although intended to improve your functioning in some ways, may also interfere with your functioning in other ways. Therefore, we will consider the frequency of any therapy you must have, and how long you have received or will need it. We will also consider whether the therapy interferes with your participation in activities typical of other children your age who do not have impairments, such as attending school or classes and socializing with your

peers. If you must frequently interrupt your activities at school or at home for therapy, we will consider whether these interruptions interfere with your functioning. We will also consider the length and frequency of your hospitalizations.

(iii) *Treatment and intervention, in general.* With treatment or intervention, you may not only have your symptoms or signs reduced, but may also maintain, return to, or achieve a level of functioning that is not disabling. Treatment or intervention may prevent, eliminate, or reduce functional limitations.

14. Section 416.925 is amended by revising the sixth and seventh sentences of paragraph (b)(2) to read as follows:

**§ 416.925 Listing of impairments in appendix 1 of subpart P of part 404 of this chapter.**

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \* Although the severity criteria in part B of the listings are expressed in different ways for different impairments, “listing-level severity” generally means the level of severity described in § 416.926a(a); *i.e.*, “marked” limitations in two domains of functioning or an “extreme” limitation in one domain. (See § 416.926a(e) for the definitions of the terms “marked” and “extreme” as they apply to children.) \* \* \*

\* \* \* \* \*

15. Section 416.926a is amended by:

- A. Revising paragraphs (a), (b), and (c);
- B. Redesignating paragraph (d) as paragraph (m);
- C. Redesignating paragraph (e) as paragraph (n);
- D. Adding new paragraphs (d) through (l);
- E. Removing paragraphs (m)(5) and (m)(10);
- F. Redesignating paragraphs (m)(6) as (m)(5), (m)(7) as (m)(6), (m)(8) as (m)(7), (m)(9) as (m)(8), (m)(11) as (m)(9), and (m)(12) as (m)(10), and
- G. By revising the heading and introductory text of paragraph (m) to read as follows:

**§ 416.926a Functional equivalence for children.**

(a) *General.* If you have a severe impairment or combination of impairments that does not meet or medically equal any listing, we will decide whether it results in limitations that functionally equal the listings. By “functionally equal the listings,” we mean that your impairment(s) must be of listing-level severity; *i.e.*, it must result in “marked” limitations in two

domains of functioning or an “extreme” limitation in one domain, as explained in this section. We will assess the functional limitations caused by your impairment(s); *i.e.*, what you cannot do, have difficulty doing, need help doing, or are restricted from doing because of your impairment(s). When we make a finding regarding functional equivalence, we will assess the interactive and cumulative effects of all of the impairments for which we have evidence, including any impairments you have that are not “severe.” (See § 416.924(c).) When we assess your functional limitations, we will consider all the relevant factors in §§ 416.924a, 416.924b, and 416.929 including, but not limited to:

- (1) How well you can initiate and sustain activities, how much extra help you need, and the effects of structured or supportive settings (*see* § 416.924a(b)(5));
  - (2) How you function in school (*see* § 416.924a(b)(7)); and
  - (3) The effects of your medications or other treatment (*see* § 416.924a(b)(9)).
- (b) *How we will consider your functioning.* We will look at the information we have in your case record about how your functioning is affected during all of your activities when we decide whether your impairment or combination of impairments functionally equals the listings. Your activities are everything you do at home, at school, and in your community. We will look at how appropriately, effectively, and independently you perform your activities compared to the performance of other children your age who do not have impairments.

(1) We will consider how you function in your activities in terms of six domains. These domains are broad areas of functioning intended to capture all of what a child can or cannot do. In paragraphs (g) through (l), we describe each domain in general terms. For most of the domains, we also provide examples of activities that illustrate the typical functioning of children in different age groups. For all of the domains, we also provide examples of limitations within the domains. However, we recognize that there is a range of development and functioning, and that not all children within an age category are expected to be able to do all of the activities in the examples of typical functioning. We also recognize that limitations of any of the activities in the examples do not necessarily mean that a child has a “marked” or “extreme” limitation, as defined in paragraph (e) of this section. The domains we use are:

- (i) Acquiring and using information;

- (ii) Attending and completing tasks;
- (iii) Interacting and relating with others;

- (iv) Moving about and manipulating objects;

- (v) Caring for yourself; and,

- (vi) Health and physical well-being.

(2) When we evaluate your ability to function in each domain, we will ask for and consider information that will help us answer the following questions about whether your impairment(s) affects your functioning and whether your activities are typical of other children your age who do not have impairments.

- (i) What activities are you able to perform?
- (ii) What activities are you not able to perform?

- (iii) Which of your activities are limited or restricted compared to other children your age who do not have impairments?

- (iv) Where do you have difficulty with your activities-at home, in childcare, at school, or in the community?

- (v) Do you have difficulty independently initiating, sustaining, or completing activities?

- (vi) What kind of help do you need to do your activities, how much help do you need, and how often do you need it?

(3) We will try to get information from sources who can tell us about the effects of your impairment(s) and how you function. We will ask for information from your treating and other medical sources who have seen you and can give us their medical findings and opinions about your limitations and restrictions. We will also ask for information from your parents and teachers, and may ask for information from others who see you often and can describe your functioning at home, in childcare, at school, and in your community. We may also ask you to go to a consultative examination(s) at our expense. (See §§ 416.912–416.919a regarding medical evidence and when we will purchase a consultative examination.)

(c) *The interactive and cumulative effects of an impairment or multiple impairments.* When we evaluate your functioning and decide which domains may be affected by your impairment(s), we will look first at your activities and your limitations and restrictions. Any given activity may involve the integrated use of many abilities and skills; therefore, any single limitation may be the result of the interactive and cumulative effects of one or more impairments. And any given impairment may have effects in more than one domain; therefore, we will evaluate the limitations from your

impairment(s) in any affected domain(s).

(d) *How we will decide that your impairment(s) functionally equals the listings.* We will decide that your impairment(s) functionally equals the listings if it is of listing-level severity. Your impairment(s) is of listing-level severity if you have "marked" limitations in two of the domains in paragraph (b)(1) of this section, or an "extreme" limitation in one domain. We will not compare your functioning to the requirements of any specific listing. We explain what the terms "marked" and "extreme" mean in paragraph (e) of this section. We explain how we use the domains in paragraph (f) of this section, and describe each domain in paragraphs (g)–(l). You must also meet the duration requirement. (See § 416.909.)

(e) *How we define "marked" and "extreme" limitations.*

(1) *General.* (i) When we decide whether you have a "marked" or an "extreme" limitation, we will consider your functional limitations resulting from all of your impairments, including their interactive and cumulative effects. We will consider all the relevant information in your case record that helps us determine your functioning, including your signs, symptoms, and laboratory findings, the descriptions we have about your functioning from your parents, teachers, and other people who know you, and the relevant factors explained in §§ 416.924a, 416.924b, and 416.929.

(ii) The medical evidence may include formal testing that provides information about your development or functioning in terms of percentiles, percentages of delay, or age or grade equivalents. Standard scores (e.g., percentiles) can be converted to standard deviations. When you have such scores, we will consider them together with the information we have about your functioning to determine whether you have a "marked" or "extreme" limitation in a domain.

(2) *Marked limitation.* (i) We will find that you have a "marked" limitation in a domain when your impairment(s) interferes seriously with your ability to independently initiate, sustain, or complete activities. Your day-to-day functioning may be seriously limited when your impairment(s) limits only one activity or when the interactive and cumulative effects of your impairment(s) limit several activities. "Marked" limitation also means a limitation that is "more than moderate" but "less than extreme." It is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least two, but less

than three, standard deviations below the mean.

(ii) If you have not attained age 3, we will generally find that you have a "marked" limitation if you are functioning at a level that is more than one-half but not more than two-thirds of your chronological age when there are no standard scores from standardized tests in your case record.

(iii) If you are a child of any age (birth to the attainment of age 18), we will find that you have a "marked" limitation when you have a valid score that is two standard deviations or more below the mean, but less than three standard deviations, on a comprehensive standardized test designed to measure ability or functioning in that domain, and your day-to-day functioning in domain-related activities is consistent with that score. (See paragraph (e)(4) of this section.)

(iv) For the sixth domain of functioning, "Health and physical well-being," we may also consider you to have a "marked" limitation if you are frequently ill because of your impairment(s) or have frequent exacerbations of your impairment(s) that result in significant, documented symptoms or signs. For purposes of this domain, "frequent means that you have episodes of illness or exacerbations that occur on an average of 3 times a year, or once every 4 months, each lasting 2 weeks or more. We may also find that you have a "marked" limitation if you have episodes that occur more often than 3 times in a year or once every 4 months but do not last for 2 weeks, or occur less often than an average of 3 times a year or once every 4 months but last longer than 2 weeks, if the overall effect (based on the length of the episode(s) or its frequency) is equivalent in severity.

(3) *Extreme limitation.* (i) We will find that you have an "extreme" limitation in a domain when your impairment(s) interferes very seriously with your ability to independently initiate, sustain, or complete activities. Your day-to-day functioning may be very seriously limited when your impairment(s) limits only one activity or when the interactive and cumulative effects of your impairment(s) limit several activities. "Extreme" limitation also means a limitation that is "more than marked." "Extreme" limitation is the rating we give to the worst limitations. However, "extreme limitation" does not necessarily mean a total lack or loss of ability to function. It is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least three standard deviations below the mean.

(ii) If you have not attained age 3, we will generally find that you have an "extreme" limitation if you are functioning at a level that is one-half of your chronological age or less when there are no standard scores from standardized tests in your case record.

(iii) If you are a child of any age (birth to the attainment of age 18), we will find that you have an "extreme" limitation when you have a valid score that is three standard deviations or more below the mean on a comprehensive standardized test designed to measure ability or functioning in that domain, and your day-to-day functioning in domain-related activities is consistent with that score. (See paragraph (e)(4) of this section.)

(iv) For the sixth domain of functioning, "Health and physical well-being," we may also consider you to have an "extreme" limitation if you are ill because of your impairment(s) or have exacerbations of your impairment(s) that result in significant, documented symptoms or signs substantially in excess of the requirements for showing a "marked" limitation in paragraph (e)(2)(iv) of this section. However, if you have episodes of illness or exacerbations of your impairment(s) that we would rate as "extreme" under this definition, your impairment(s) should meet or medically equal the requirements of a listing in most cases. See §§ 416.925 and 416.926.

(4) *How we will consider your test scores.* (i) As indicated in § 416.924a(a)(1)(ii), we will not rely on any test score alone. No single piece of information taken in isolation can establish whether you have a "marked" or an "extreme" limitation in a domain.

(ii) We will consider your test scores together with the other information we have about your functioning, including reports of classroom performance and the observations of school personnel and others.

(A) We may find that you have a "marked" or "extreme" limitation when you have a test score that is slightly higher than the level provided in paragraph (e)(2) or (e)(3) of this section, if other information in your case record shows that your functioning in day-to-day activities is seriously or very seriously limited because of your impairment(s). For example, you may have IQ scores above the level in paragraph (e)(2), but other evidence shows that your impairment(s) causes you to function in school, home, and the community far below your expected level of functioning based on this score.

(B) On the other hand, we may find that you do not have a "marked" or "extreme" limitation, even if your test

scores are at the level provided in paragraph (e)(2) or (e)(3) of this section, if other information in your case record shows that your functioning in day-to-day activities is not seriously or very seriously limited by your impairment(s). For example, you may have a valid IQ score below the level in paragraph (e)(2), but other evidence shows that you have learned to drive a car, shop independently, and read books near your expected grade level.

(iii) If there is a material inconsistency between your test scores and other information in your case record, we will try to resolve it. The interpretation of the test is primarily the responsibility of the psychologist or other professional who administered the test. But it is also our responsibility to ensure that the evidence in your case is complete and consistent or that any material inconsistencies have been resolved. Therefore, we will use the following guidelines when we resolve concerns about your test scores:

(A) We may be able to resolve the inconsistency with the information we have. We may need to obtain additional information; *e.g.*, by recontact with your medical source(s), by purchase of a consultative examination to provide further medical information, by recontact with a medical source who provided a consultative examination, or by questioning individuals familiar with your day-to-day functioning.

(B) Generally, we will not rely on a test score as a measurement of your functioning within a domain when the information we have about your functioning is the kind of information typically used by medical professionals to determine that the test results are not the best measure of your day-to-day functioning. When we do not rely on test scores, we will explain our reasons for doing so in your case record or in our decision.

(f) *We will use the domains to help us evaluate your functioning.* (1) When we consider whether you have "marked" or "extreme" limitations in any domain, we examine all the information we have in your case record about how your functioning is limited because of your impairment(s), and we compare your functioning to the typical functioning of children your age who do not have impairments.

(2) The general descriptions of each domain in paragraphs (g)–(l) help us decide whether you have limitations in any given domain and whether these limitations are "marked" or "extreme."

(3) The domain descriptions also include examples of some activities typical of children in each age group and some functional limitations that we

may consider. These examples also help us decide whether you have limitations in a domain because of your impairment(s). The examples are not all-inclusive, and we will not require our adjudicators to develop evidence about each specific example. When you have limitations in a given activity or activities in the examples, we may or may not decide that you have a "marked" or "extreme" limitation in the domain. We will consider the activities in which you are limited because of your impairment(s) and the extent of your limitations under the rules in paragraph (e) of this section. We will also consider all of the relevant provisions of §§ 416.924a, 416.924b, and 416.929.

(g) *Acquiring and using information.* In this domain, we consider how well you acquire or learn information, and how well you use the information you have learned.

(1) *General.* (i) Learning and thinking begin at birth. You learn as you explore the world through sight, sound, taste, touch, and smell. As you play, you acquire concepts and learn that people, things, and activities have names. This lets you understand symbols, which prepares you to use language for learning. Using the concepts and symbols you have acquired through play and learning experiences, you should be able to learn to read, write, do arithmetic, and understand and use new information.

(ii) Thinking is the application or use of information you have learned. It involves being able to perceive relationships, reason, and make logical choices. People think in different ways. When you think in pictures, you may solve a problem by watching and imitating what another person does. When you think in words, you may solve a problem by using language to talk your way through it. You must also be able to use language to think about the world and to understand others and express yourself; *e.g.*, to follow directions, ask for information, or explain something.

(2) *Age group descriptors.* (i) *Newborns and young infants (birth to attainment of age 1).* At this age, you should show interest in, and explore, your environment. At first, your actions are random; for example, when you accidentally touch the mobile over your crib. Eventually, your actions should become deliberate and purposeful, as when you shake noisemaking toys like a bell or rattle. You should begin to recognize, and then anticipate, routine situations and events, as when you grin with expectation at the sight of your stroller. You should also recognize and

gradually attach meaning to everyday sounds, as when you hear the telephone or your name. Eventually, you should recognize and respond to familiar words, including family names and what your favorite toys and activities are called.

(ii) *Older infants and toddlers (age 1 to attainment of age 3).* At this age, you are learning about the world around you. When you play, you should learn how objects go together in different ways. You should learn that by pretending, your actions can represent real things. This helps you understand that words represent things, and that words are simply symbols or names for toys, people, places, and activities. You should refer to yourself and things around you by pointing and eventually by naming. You should form concepts and solve simple problems through purposeful experimentation (*e.g.*, taking toys apart), imitation, constructive play (*e.g.*, building with blocks), and pretend play activities. You should begin to respond to increasingly complex instructions and questions, and to produce an increasing number of words and grammatically correct simple sentences and questions.

(iii) *Preschool children (age 3 to attainment of age 6).* When you are old enough to go to preschool or kindergarten, you should begin to learn and use the skills that will help you to read and write and do arithmetic when you are older. For example, listening to stories, rhyming words, and matching letters are skills needed for learning to read. Counting, sorting shapes, and building with blocks are skills needed to learn math. Painting, coloring, copying shapes, and using scissors are some of the skills needed in learning to write. Using words to ask questions, give answers, follow directions, describe things, explain what you mean, and tell stories allows you to acquire and share knowledge and experience of the world around you. All of these are called "readiness skills," and you should have them by the time you begin first grade.

(iv) *School-age children (age 6 to attainment of age 12).* When you are old enough to go to elementary and middle school, you should be able to learn to read, write, and do math, and discuss history and science. You will need to use these skills in academic situations to demonstrate what you have learned; *e.g.*, by reading about various subjects and producing oral and written projects, solving mathematical problems, taking achievement tests, doing group work, and entering into class discussions. You will also need to use these skills in daily living situations at home and in the community (*e.g.*, reading street signs,

telling time, and making change). You should be able to use increasingly complex language (vocabulary and grammar) to share information and ideas with individuals or groups, by asking questions and expressing your own ideas, and by understanding and responding to the opinions of others.

(v) *Adolescents (age 12 to attainment of age 18)*. In middle and high school, you should continue to demonstrate what you have learned in academic assignments (e.g., composition, classroom discussion, and laboratory experiments). You should also be able to use what you have learned in daily living situations without assistance (e.g., going to the store, using the library, and using public transportation). You should be able to comprehend and express both simple and complex ideas, using increasingly complex language (vocabulary and grammar) in learning and daily living situations (e.g., to obtain and convey information and ideas). You should also learn to apply these skills in practical ways that will help you enter the workplace after you finish school (e.g., carrying out instructions, preparing a job application, or being interviewed by a potential employer).

(3) *Examples of limited functioning in acquiring and using information*. The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a "marked" or "extreme" limitation. Whether an example applies in your case may depend on your age and developmental stage; e.g., an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a "marked" or "extreme" limitation in this domain.

(i) You do not demonstrate understanding of words about space, size, or time; e.g., in/under, big/little, morning/night.

(ii) You cannot rhyme words or the sounds in words.

(iii) You have difficulty recalling important things you learned in school yesterday.

(iv) You have difficulty solving mathematics questions or computing arithmetic answers.

(v) You talk only in short, simple sentences and have difficulty explaining what you mean.

(h) *Attending and completing tasks*. In this domain, we consider how well you are able to focus and maintain your attention, and how well you begin, carry through, and finish your activities, including the pace at which you perform activities and the ease with which you change them.

(1) *General*. (i) Attention involves regulating your levels of alertness and initiating and maintaining concentration. It involves the ability to filter out distractions and to remain focused on an activity or task at a consistent level of performance. This means focusing long enough to initiate and complete an activity or task, and changing focus once it is completed. It also means that if you lose or change your focus in the middle of a task, you are able to return to the task without other people having to remind you frequently to finish it.

(ii) Adequate attention is needed to maintain physical and mental effort and concentration on an activity or task. Adequate attention permits you to think and reflect before starting or deciding to stop an activity. In other words, you are able to look ahead and predict the possible outcomes of your actions before you act. Focusing your attention allows you to attempt tasks at an appropriate pace. It also helps you determine the time needed to finish a task within an appropriate timeframe.

(2) *Age group descriptors*. (i) *Newborns and young infants (birth to attainment of age 1)*. You should begin at birth to show sensitivity to your environment by responding to various stimuli (e.g., light, touch, temperature, movement). Very soon, you should be able to fix your gaze on a human face. You should stop your activity when you hear voices or sounds around you. Next, you should begin to attend to and follow various moving objects with your gaze, including people or toys. You should be listening to your family's conversations for longer and longer periods of time. Eventually, as you are able to move around and explore your environment, you should begin to play with people and toys for longer periods of time. You will still want to change activities frequently, but your interest in continuing interaction or a game should gradually expand.

(ii) *Older infants and toddlers (age 1 to attainment of age 3)*. At this age, you should be able to attend to things that interest you and have adequate attention to complete some tasks by yourself. As a toddler, you should demonstrate sustained attention, such as when looking at picture books, listening to stories, or building with blocks, and when helping to put on your clothes.

(iii) *Preschool children (age 3 to attainment of age 6)*. As a preschooler, you should be able to pay attention when you are spoken to directly, sustain attention to your play and learning activities, and concentrate on activities like putting puzzles together or completing art projects. You should also be able to focus long enough to do many more things by yourself, such as getting your clothes together and dressing yourself, feeding yourself, or putting away your toys. You should usually be able to wait your turn and to change your activity when a caregiver or teacher says it is time to do something else.

(iv) *School-age children (age 6 to attainment of age 12)*. When you are of school age, you should be able to focus your attention in a variety of situations in order to follow directions, remember and organize your school materials, and complete classroom and homework assignments. You should be able to concentrate on details and not make careless mistakes in your work (beyond what would be expected in other children your age who do not have impairments). You should be able to change your activities or routines without distracting yourself or others, and stay on task and in place when appropriate. You should be able to sustain your attention well enough to participate in group sports, read by yourself, and complete family chores. You should also be able to complete a transition task (e.g., be ready for the school bus, change clothes after gym, change classrooms) without extra reminders and accommodation.

(v) *Adolescents (age 12 to attainment of age 18)*. In your later years of school, you should be able to pay attention to increasingly longer presentations and discussions, maintain your concentration while reading textbooks, and independently plan and complete long-range academic projects. You should also be able to organize your materials and to plan your time in order to complete school tasks and assignments. In anticipation of entering the workplace, you should be able to maintain your attention on a task for extended periods of time, and not be unduly distracted by your peers or unduly distracting to them in a school or work setting.

(3) *Examples of limited functioning in attending and completing tasks*. The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a "marked" or "extreme" limitation. Whether an example applies

in your case may depend on your age and developmental stage; *e.g.*, an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a "marked" or "extreme" limitation in this domain.

(i) You are easily startled, distracted, or overreactive to sounds, sights, movements, or touch.

(ii) You are slow to focus on, or fail to complete activities of interest to you, *e.g.*, games or art projects.

(iii) You repeatedly become sidetracked from your activities or you frequently interrupt others.

(iv) You are easily frustrated and give up on tasks, including ones you are capable of completing.

(v) You require extra supervision to keep you engaged in an activity.

(i) *Interacting and relating with others.* In this domain, we consider how well you initiate and sustain emotional connections with others, develop and use the language of your community, cooperate with others, comply with rules, respond to criticism, and respect and take care of the possessions of others.

(1) *General.* (i) Interacting means initiating and responding to exchanges with other people, for practical or social purposes. You interact with others by using facial expressions, gestures, actions, or words. You may interact with another person only once, as when asking a stranger for directions, or many times, as when describing your day at school to your parents. You may interact with people one-at-a-time, as when you are listening to another student in the hallway at school, or in groups, as when you are playing with others.

(ii) Relating to other people means forming intimate relationships with family members and with friends who are your age, and sustaining them over time. You may relate to individuals, such as your siblings, parents or best friend, or to groups, such as other children in childcare, your friends in school, teammates in sports activities, or people in your neighborhood.

(iii) Interacting and relating require you to respond appropriately to a variety of emotional and behavioral cues. You must be able to speak intelligibly and fluently so that others can understand you; participate in verbal turntaking and nonverbal exchanges; consider others' feelings and points of view; follow social rules for

interaction and conversation; and respond to others appropriately and meaningfully.

(iv) Your activities at home or school or in your community may involve playing, learning, and working cooperatively with other children, one-at-a-time or in groups; joining voluntarily in activities with the other children in your school or community; and responding to persons in authority (*e.g.*, your parent, teacher, bus driver, coach, or employer).

(2) *Age group descriptors.* (i) *Newborns and young infants (birth to attainment of age 1).* You should begin to form intimate relationships at birth by gradually responding visually and vocally to your caregiver(s), through mutual gaze and vocal exchanges, and by physically molding your body to the caregiver's while being held. You should eventually initiate give-and-take games (such as pat-a-cake, peek-a-boo) with your caregivers, and begin to affect others through your own purposeful behavior (*e.g.*, gestures and vocalizations). You should be able to respond to a variety of emotions (*e.g.*, facial expressions and vocal tone changes). You should begin to develop speech by using vowel sounds and later consonants, first alone, and then in babbling.

(ii) *Older infants and toddlers (age 1 to attainment of age 3).* At this age, you are dependent upon your caregivers, but should begin to separate from them. You should be able to express emotions and respond to the feelings of others. You should begin initiating and maintaining interactions with adults, but also show interest in, then play alongside, and eventually interact with other children your age. You should be able to spontaneously communicate your wishes or needs, first by using gestures, and eventually by speaking words clearly enough that people who know you can understand what you say most of the time.

(iii) *Preschool children (age 3 to attainment of age 6).* At this age, you should be able to socialize with children as well as adults. You should begin to prefer playmates your own age and start to develop friendships with children who are your age. You should be able to use words instead of actions to express yourself, and also be better able to share, show affection, and offer to help. You should be able to relate to caregivers with increasing independence, choose your own friends, and play cooperatively with other children, one-at-a-time or in a group, without continual adult supervision. You should be able to initiate and participate in conversations, using

increasingly complex vocabulary and grammar, and speaking clearly enough that both familiar and unfamiliar listeners can understand what you say most of the time.

(iv) *School-age children (age 6 to attainment of age 12).* When you enter school, you should be able to develop more lasting friendships with children who are your age. You should begin to understand how to work in groups to create projects and solve problems. You should have an increasing ability to understand another's point of view and to tolerate differences. You should be well able to talk to people of all ages, to share ideas, tell stories, and to speak in a manner that both familiar and unfamiliar listeners readily understand.

(v) *Adolescents (age 12 to attainment of age 18).* By the time you reach adolescence, you should be able to initiate and develop friendships with children who are your age and to relate appropriately to other children and adults, both individually and in groups. You should begin to be able to solve conflicts between yourself and peers or family members or adults outside your family. You should recognize that there are different social rules for you and your friends and for acquaintances or adults. You should be able to intelligibly express your feelings, ask for assistance in getting your needs met, seek information, describe events, and tell stories, in all kinds of environments (*e.g.*, home, classroom, sports, extra-curricular activities, or part-time job), and with all types of people (*e.g.*, parents, siblings, friends, classmates, teachers, employers, and strangers).

(3) *Examples of limited functioning in interacting and relating with others.* The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a "marked" or "extreme" limitation. Whether an example applies in your case may depend on your age and developmental stage; *e.g.*, an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a "marked" or "extreme" limitation in this domain.

(i) You do not reach out to be picked up and held by your caregiver.

(ii) You have no close friends, or your friends are all older or younger than you.

(iii) You avoid or withdraw from people you know, or you are overly anxious or fearful of meeting new people or trying new experiences.

(iv) You have difficulty playing games or sports with rules.

(v) You have difficulty communicating with others; *e.g.*, in using verbal and nonverbal skills to express yourself, carrying on a conversation, or in asking others for assistance.

(vi) You have difficulty speaking intelligibly or with adequate fluency.

(j) *Moving about and manipulating objects.* In this domain, we consider how you move your body from one place to another and how you move and manipulate things. These are called gross and fine motor skills.

(1) *General.* (i) Moving your body involves several different kinds of actions: Rolling your body; rising or pulling yourself from a sitting to a standing position; pushing yourself up; raising your head, arms, and legs, and twisting your hands and feet; balancing your weight on your legs and feet; shifting your weight while sitting or standing; transferring yourself from one surface to another; lowering yourself to or toward the floor as when bending, kneeling, stooping, or crouching; moving yourself forward and backward in space as when crawling, walking, or running, and negotiating different terrains (*e.g.*, curbs, steps, and hills).

(ii) Moving and manipulating things involves several different kinds of actions: Engaging your upper and lower body to push, pull, lift, or carry objects from one place to another; controlling your shoulders, arms, and hands to hold or transfer objects; coordinating your eyes and hands to manipulate small objects or parts of objects.

(iii) These actions require varying degrees of strength, coordination, dexterity, pace, and physical ability to persist at the task. They also require a sense of where your body is and how it moves in space; the integration of sensory input with motor output; and the capacity to plan, remember, and execute controlled motor movements.

(2) *Age group descriptors.* (i) *Newborns and infants (birth to attainment of age 1).* At birth, you should begin to explore your world by moving your body and by using your limbs. You should learn to hold your head up, sit, crawl, and stand, and sometimes hold onto a stable object and stand actively for brief periods. You should begin to practice your developing eye-hand control by reaching for objects or picking up small objects and dropping them into containers.

(ii) *Older infants and toddlers (age 1 to attainment of age 3).* At this age, you should begin to explore actively a wide area of your physical environment, using your body with steadily increasing control and independence from others. You should begin to walk and run without assistance, and climb with increasing skill. You should frequently try to manipulate small objects and to use your hands to do or get something that you want or need. Your improved motor skills should enable you to play with small blocks, scribble with crayons, and feed yourself.

(iii) *Preschool children (age 3 to attainment of age 6).* As a preschooler, you should be able to walk and run with ease. Your gross motor skills should let you climb stairs and playground equipment with little supervision, and let you play more independently; *e.g.*, you should be able to swing by yourself and may start learning to ride a tricycle. Your fine motor skills should also be developing. You should be able to complete puzzles easily, string beads, and build with an assortment of blocks. You should be showing increasing control of crayons, markers, and small pieces in board games, and should be able to cut with scissors independently and manipulate buttons and other fasteners.

(iv) *School-age children (age 6 to attainment of age 12).* As a school-age child, your developing gross motor skills should let you move at an efficient pace about your school, home, and neighborhood. Your increasing strength and coordination should expand your ability to enjoy a variety of physical activities, such as running and jumping, and throwing, kicking, catching and hitting balls in informal play or organized sports. Your developing fine motor skills should enable you to do things like use many kitchen and household tools independently, use scissors, and write.

(v) *Adolescents (age 12 to attainment of age 18).* As an adolescent, you should be able to use your motor skills freely and easily to get about your school, the neighborhood, and the community. You should be able to participate in a full range of individual and group physical fitness activities. You should show mature skills in activities requiring eye-hand coordination, and should have the fine motor skills needed to write efficiently or type on a keyboard.

(3) *Examples of limited functioning in moving about and manipulating objects.* The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily

describe a "marked" or "extreme" limitation. Whether an example applies in your case may depend on your age and developmental stage; *e.g.*, an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a "marked" or "extreme" limitation in this domain.

(i) You experience muscle weakness, joint stiffness, or sensory loss (*e.g.*, spasticity, hypotonia, neuropathy, or paresthesia) that interferes with your motor activities (*e.g.*, you unintentionally drop things).

(ii) You have trouble climbing up and down stairs, or have jerky or disorganized locomotion or difficulty with your balance.

(iii) You have difficulty coordinating gross motor movements (*e.g.*, bending, kneeling, crawling, running, jumping rope, or riding a bike).

(iv) You have difficulty with sequencing hand or finger movements.

(v) You have difficulty with fine motor movement (*e.g.*, gripping or grasping objects).

(vi) You have poor eye-hand coordination when using a pencil or scissors.

(k) *Caring for yourself.* In this domain, we consider how well you maintain a healthy emotional and physical state, including how well you get your physical and emotional wants and needs met in appropriate ways; how you cope with stress and changes in your environment; and whether you take care of your own health, possessions, and living area.

(1) *General.* (i) Caring for yourself effectively, which includes regulating yourself, depends upon your ability to respond to changes in your emotions and the daily demands of your environment to help yourself and cooperate with others in taking care of your personal needs, health and safety. It is characterized by a sense of independence and competence. The effort to become independent and competent should be observable throughout your childhood.

(ii) Caring for yourself effectively means becoming increasingly independent in making and following your own decisions. This entails relying on your own abilities and skills, and displaying consistent judgment about the consequences of caring for yourself. As you mature, using and testing your own judgment helps you develop

confidence in your independence and competence. Caring for yourself includes using your independence and competence to meet your physical needs, such as feeding, dressing, toileting, and bathing, appropriately for your age.

(iii) Caring for yourself effectively requires you to have a basic understanding of your body, including its normal functioning, and of your physical and emotional needs. To meet these needs successfully, you must employ effective coping strategies, appropriate to your age, to identify and regulate your feelings, thoughts, urges, and intentions. Such strategies are based on taking responsibility for getting your needs met in an appropriate and satisfactory manner.

(iv) Caring for yourself means recognizing when you are ill, following recommended treatment, taking medication as prescribed, following safety rules, responding to your circumstances in safe and appropriate ways, making decisions that do not endanger yourself, and knowing when to ask for help from others.

(2) *Age group descriptors.* (i) *Newborns and infants (birth to attainment of age 1).* Your sense of independence and competence begins in being able to recognize your body's signals (e.g., hunger, pain, discomfort), to alert your caregiver to your needs (e.g., by crying), and to console yourself (e.g., by sucking on your hand) until help comes. As you mature, your capacity for self-consolation should expand to include rhythmic behaviors (e.g., rocking). Your need for a sense of competence also emerges in things you try to do for yourself, perhaps before you are ready to do them, as when insisting on putting food in your mouth and refusing your caregiver's help.

(ii) *Older infants and toddlers (age 1 to attainment of age 3).* As you grow, you should be trying to do more things for yourself that increase your sense of independence and competence in your environment. You might console yourself by carrying a favorite blanket with you everywhere. You should be learning to cooperate with your caregivers when they take care of your physical needs, but you should also want to show what you can do; e.g., pointing to the bathroom, pulling off your coat. You should be experimenting with your independence by showing some degree of contrariness (e.g., "No! No!") and identity (e.g., hoarding your toys).

(iii) *Preschool children (age 3 to attainment of age 6).* You should want to take care of many of your physical needs by yourself (e.g., putting on your

shoes, getting a snack), and also want to try doing some things that you cannot do fully (e.g., tying your shoes, climbing on a chair to reach something up high, taking a bath). Early in this age range, it may be easy for you to agree to do what your caregiver asks. Later, that may be difficult for you because you want to do things your way or not at all. These changes usually mean that you are more confident about your ideas and what you are able to do. You should also begin to understand how to control behaviors that are not good for you (e.g., crossing the street without an adult).

(iv) *School-age children (age 6 to attainment of age 12).* You should be independent in most day-to-day activities (e.g., dressing yourself, bathing yourself), although you may still need to be reminded sometimes to do these routinely. You should begin to recognize that you are competent in doing some activities and that you have difficulty with others. You should be able to identify those circumstances when you feel good about yourself and when you feel bad. You should begin to develop understanding of what is right and wrong, and what is acceptable and unacceptable behavior. You should begin to demonstrate consistent control over your behavior, and you should be able to avoid behaviors that are unsafe or otherwise not good for you. You should begin to imitate more of the behavior of adults you know.

(v) *Adolescents (age 12 to attainment of age 18).* You should feel more independent from others and should be increasingly independent in all of your day-to-day activities. You may sometimes experience confusion in the way you feel about yourself. You should begin to notice significant changes in your body's development, and this can result in anxiety or worrying about yourself and your body. Sometimes these worries can make you feel angry or frustrated. You should begin to discover appropriate ways to express your feelings, both good and bad (e.g., keeping a diary to sort out angry feelings or listening to music to calm yourself down). You should begin to think seriously about your future plans, and what you will do when you finish school.

(3) *Examples of limited functioning in caring for yourself.* The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a "marked" or "extreme" limitation. Whether an example applies in your case may depend on your age and developmental stage; e.g., an example below may

describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a "marked" or "extreme" limitation in this domain.

(i) You continue to place non-nutritive or inedible objects in your mouth.

(ii) You often use self-soothing activities showing developmental regression (e.g., thumbsucking, re-chewing food), or you have restrictive or stereotyped mannerisms (e.g., body rocking, headbanging).

(iii) You do not dress or bathe yourself appropriately for your age because you have an impairment(s) that affects this domain.

(iv) You engage in self-injurious behavior (e.g., suicidal thoughts or actions, self-inflicted injury, or refusal to take your medication), or you ignore safety rules.

(v) You do not spontaneously pursue enjoyable activities or interests.

(vi) You have disturbance in eating or sleeping patterns.

(1) *Health and physical well-being.* In this domain, we consider the cumulative physical effects of physical or mental impairments and their associated treatments or therapies on your functioning that we did not consider in paragraph (j) of this section. When your physical impairment(s), your mental impairment(s), or your combination of physical and mental impairments has physical effects that cause "extreme" limitation in your functioning, you will generally have an impairment(s) that "meets" or "medically equals" a listing.

(1) A physical or mental disorder may have physical effects that vary in kind and intensity, and may make it difficult for you to perform your activities independently or effectively. You may experience problems such as generalized weakness, dizziness, shortness of breath, reduced stamina, fatigue, psychomotor retardation, allergic reactions, recurrent infection, poor growth, bladder or bowel incontinence, or local or generalized pain.

(2) In addition, the medications you take (e.g., for asthma or depression) or the treatments you receive (e.g., chemotherapy or multiple surgeries) may have physical effects that also limit your performance of activities.

(3) Your illness may be chronic with stable symptoms, or episodic with periods of worsening and improvement.

We will consider how you function during periods of worsening and how often and for how long these periods occur. You may be medically fragile and need intensive medical care to maintain your level of health and physical well-being. In any case, as a result of the illness itself, the medications or treatment you receive, or both, you may experience physical effects that interfere with your functioning in any or all of your activities.

(4) *Examples of limitations in health and physical well-being.* The following examples describe some limitations we may consider in this domain. Your limitations may be different from the ones listed here. Also, the examples do not necessarily describe a "marked" or "extreme" limitation. Whether an example applies in your case may depend on your age and developmental stage; e.g., an example below may describe a limitation in an older child, but not a limitation in a younger one. As in any case, your limitations must result from your medically determinable impairment(s). However, we will consider all of the relevant information in your case record when we decide whether your medically determinable impairment(s) results in a "marked" or "extreme" limitation in this domain.

(i) You have generalized symptoms, such as weakness, dizziness, agitation (e.g., excitability), lethargy (e.g., fatigue or loss of energy or stamina), or psychomotor retardation because of your impairment(s).

(ii) You have somatic complaints related to your impairments (e.g., seizure or convulsive activity, headaches, incontinence, recurrent infections, allergies, changes in weight or eating habits, stomach discomfort, nausea, headaches, or insomnia).

(iii) You have limitations in your physical functioning because of your treatment (e.g., chemotherapy, multiple surgeries, chelation, pulmonary cleansing, or nebulizer treatments).

(iv) You have exacerbations from one impairment or a combination of impairments that interfere with your physical functioning.

(v) You are medically fragile and need intensive medical care to maintain your level of health and physical well-being.

(m) *Examples of impairments that functionally equal the listings.* The following are some examples of impairments and limitations that functionally equal the listings. Findings of equivalence based on the disabling functional limitations of a child's impairment(s) are not limited to the examples in this paragraph, because these examples do not describe all possible effects of impairments that

might be found to functionally equal the listings. As with any disabling impairment, the duration requirement must also be met (see §§ 416.909 and 416.924(a)). \* \* \*

\* \* \* \* \*

16. Section 416.929 is amended by revising the second, third, sixth, eighth, and ninth sentences of paragraph (d)(3) and the last sentence of paragraph (d)(4) to read as follows:

**§ 416.929 How we evaluate symptoms, including pain.**

\* \* \* \* \*

(d) \* \* \*

\* \* \* \* \*

(3) \* \* \* Section 416.926 explains how we make this determination. Under § 416.926(b), we will consider equivalence based on medical evidence only. \* \* \* (If you are a child and we cannot find equivalence based on medical evidence only, we will consider pain and other symptoms under §§ 416.924a and 416.926a in determining whether you have an impairment(s) that functionally equals the listings.) \* \* \* (If you are a child and your impairment(s) functionally equals the listings under the rules in § 416.926a, we will also find you disabled.) If they are not, we will consider the impact of your symptoms on your residual functional capacity if you are an adult. \* \* \*

(4) \* \* \* (See §§ 416.945 and 416.924a–416.924b.)

17. Section 416.987 is revised to read as follows:

**§ 416.987 Disability redeterminations for individuals who attain age 18.**

(a) *Who is affected by this section?* (1) We must redetermine your eligibility if you are eligible for SSI disability benefits and:

- (i) You are at least 18 years old; and
- (ii) You became eligible for SSI disability benefits as a child (i.e., before you attained age 18); and
- (iii) You were eligible for such benefits for the month before the month in which you attained age 18.

(2) We may find that you are not now disabled even though we previously found that you were disabled.

(b) *What are the rules for age-18 redeterminations?* When we redetermine your eligibility, we will use the rules for adults (individuals age 18 or older) who file new applications explained in §§ 416.920(c) through (f). We will not use the rule in § 416.920(b) for people who are doing substantial gainful activity, and we will not use the rules in § 416.994 for determining whether disability continues. If you are

working and we find that you are disabled under § 416.920(d) or (f), we will apply the rules in §§ 416.260ff.

(c) *When will my eligibility be redetermined?* We will redetermine your eligibility either during the 1-year period beginning on your 18th birthday or, in lieu of a continuing disability review, whenever we determine that your case is subject to redetermination under the Act.

(d) *Will I be notified?* (1) *We will notify you in writing before we begin your disability redetermination.* We will tell you:

- (i) That we are redetermining your eligibility for payments;
- (ii) Why we are redetermining your eligibility;
- (iii) Which disability rules we will apply;
- (iv) That our review could result in a finding that your SSI payments based on disability could be terminated;
- (v) That you have the right to submit medical and other evidence for our consideration during the redetermination; and
- (vi) That we will notify you of our determination, your right to appeal the determination, and your right to request continuation of benefits during appeal.

(2) *We will notify you in writing of the results of the disability redetermination.* The notice will tell you what our determination is, the reasons for our determination, and your right to request reconsideration of the determination. If our determination shows that we should stop your SSI payments based on disability, the notice will also tell you of your right to request that your benefits continue during any appeal. Our initial disability redetermination will be binding unless you request a reconsideration within the stated time period or we revise the initial determination.

(e) *When will we find that your disability ended?* If we find that you are not disabled, we will find that your disability ended in the earliest of:

(1) The month the evidence shows that you are not disabled under the rules in this section, but not earlier than the month in which we mail you a notice saying that you are not disabled.

(2) The first month in which you failed without good cause to follow prescribed treatment under the rules in § 416.930.

(3) The first month in which you failed without good cause to do what we asked. Section 416.1411 explains the factors we will consider and how we will determine generally whether you have good cause for failure to cooperate. In addition, § 416.918 discusses how we determine whether you have good cause

for failing to attend a consultative examination.

18. Section 416.990 is amended by revising paragraph (b)(11) to read as follows:

**§ 416.990 When and how often we will conduct a continuing disability review.**

\* \* \* \* \*

(b) \* \* \*

(11) By your first birthday, if you are a child whose low birth weight was a contributing factor material to our determination that you were disabled; *i.e.*, whether we would have found you disabled if we had not considered your low birth weight. However, we will conduct your continuing disability review later if at the time of our initial determination that you were disabled:

(i) We determine that you have an impairment that is not expected to improve by your first birthday; and  
(ii) We schedule you for a continuing disability review after your first birthday.

\* \* \* \* \*

19. Section 416.994a is amended by revising the last sentence of paragraph (b)(3)(ii), the heading and first sentence of paragraph (b)(3)(iii), the fourth sentence of paragraph (d), the first and second sentences of paragraph (e)(1), and (i)(1)(ii) and (i)(2) to read as follows:

**§ 416.994a How we will determine whether your disability continues or ends, and whether you are and have been receiving treatment that is medically necessary and available, disabled children.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) \* \* \* If not, we will consider whether it functionally equals the listings.

(iii) *Does your impairment(s) functionally equal the listings?* If your current impairment(s) functionally equals the listings, as described in § 416.926a, we will find that your disability continues. \* \* \*

\* \* \* \* \*

(d) \* \* \* If not, we will determine whether an attempt should be made to reconstruct those portions of the missing file that were relevant to our most recent favorable determination or decision (e.g., school records, medical evidence from treating sources, and the results of consultative examinations).

\* \* \*

(e) \* \* \*

(1) \* \* \* Changing methodologies and advances in medical and other diagnostic techniques or evaluations have given rise to, and will continue to give rise to, improved methods for determining the causes of (*i.e.*,

diagnosing) and measuring and documenting the effects of various impairments on children and their functioning. Where, by such new or improved methods, substantial evidence shows that your impairment(s) is not as severe as was determined at the time of our most recent favorable decision, such evidence may serve as a basis for a finding that you are no longer disabled, provided that you do not currently have an impairment(s) that meets, medically equals, or functionally equals the listings, and therefore results in marked and severe functional limitations. \* \* \*

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(ii) Psychological or psychosocial counseling; \* \* \*

(2) *How we will consider whether medically necessary treatment is available.* When we decide whether medically necessary treatment is available, we will consider such things as (but not limited to) \* \* \*

\* \* \* \* \*

[FR Doc. 00-22753 Filed 9-8-00; 8:45 am]

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## AGENCY FOR INTERNATIONAL DEVELOPMENT

### 22 CFR Part 203

#### Registration of Agencies for Voluntary Foreign Aid

**AGENCY:** United States Agency for International Development (USAID).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends USAID regulations on Registration of Agencies for Voluntary Foreign Aid. Registration is required for U.S. private and voluntary organizations (PVO) to become eligible for most USAID grant funds. The final rule clarifies registration conditions by adding an express criterion for denying or withdrawing registration.

**EFFECTIVE DATE:** September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Mary Newton, Registrar, Office of Private and Voluntary Cooperation, USAID, telephone 202-712-4747; telefax (202) 216-3041.

**SUPPLEMENTARY INFORMATION:** The U.S. Agency for International Development's registration process identifies PVOs engaged in foreign assistance operations and determines whether they meet established criteria to be eligible for resources intended for PVOs. Registration is the initial criterion of eligibility for U.S. PVOs to compete for

most forms of USAID assistance. Registration is not required for organizations working under contract with USAID. The regulation at 22 CFR Part 203 was published as a final rule January 21, 1983 (48 FR 2760). After operating under the regulation for a number of years it has been determined that part 203 needs revision and clarification. Under its required procedures, the Agency has conducted a review of the PVO registration process and determined that the final rule is necessary to ensure the Agency identifies suitable, qualified PVOs for registration. The final rule will clarify the Conditions of Registration and Documentation Requirements to identify which U.S.-based PVOs are eligible for USAID resources. USAID has determined that the final rule will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132. USAID has determined also that 5 U.S.C. 553 and Executive Order 12866 are not applicable to this final rule because its subject matter involves foreign affairs functions of the United States. This final rule will have no significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, nor does it establish any collection of information as contemplated by the Paperwork Reduction Act.

#### List of Subjects in 22 CFR Part 203

Foreign aid, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly 22 CFR Part 203 is amended as follows:

#### PART 203—REGISTRATION OF AGENCIES FOR VOLUNTARY FOREIGN AID

1. The authority citation for Part 203 continues to read as follows:

**Authority:** Sec. 621, Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381).

2. Section 203.2 is amended by adding new paragraph (i) to read as follows:

#### § 203.2 Conditions of registration and documentation requirements for U.S. private and voluntary organizations.

\* \* \* \* \*

(i) *Condition and documentation requirement no. 9—(1) Condition.* That the applicant is not:

(i) Suspended or debarred by an agency of the United States Government;

(ii) Designated as a foreign terrorist organization by the Secretary of State pursuant to section 219 of the Immigration and Nationality Act, as amended; or

(iii) The subject of a decision by the Department of State to the effect that registration, or a financial relationship between USAID and the organization, is contrary to the national defense, national security, or foreign policy interests of the United States.

(2) Documentation requirement. None.

Dated: September 5, 2000.

**Hugh Q. Parmer,**

*Assistant Administrator, Bureau for Humanitarian Response, United States Agency for International Development.*

[FR Doc. 00-23167 Filed 9-8-00; 8:45 am]

BILLING CODE 6116-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 931

[SPATS No. NM-039-FOR]

#### New Mexico Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed revisions about the definitions of "Material Damage" and "Occupied Residential Dwelling and Associated Structures"; improvidently issued permits; design, construction, and inspection requirements for ponds and impoundments; ground cover requirements for lands to be developed for recreation and shelterbelts; subsidence buffer zones; and adjustment of bond amounts. New Mexico intended to revise its program to be consistent with the corresponding Federal regulations and clarify ambiguities.

**EFFECTIVE DATE:** September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Willis L. Gainer, Telephone: (505) 248-5096, Internet address: WGAINER@OSMRE.GOV.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the New Mexico Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

#### I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.11, 931.15, 931.16, and 931.30.

#### II. Submission of the Proposed Amendment

By letter dated November 13, 1998, New Mexico sent to us an amendment (SPATS No. NM-039-FOR, administrative record No. NM-804) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative and in response to required amendments at 30 CFR 931.16(o), (w), (x), (y), and (aa).

We announced receipt of the amendment in the December 3, 1998 **Federal Register** (63 FR 66772), provided an opportunity for a public hearing or meeting, neither was held. The public comment period ended on January 4, 1999.

During our review of the amendment, we identified concerns and notified New Mexico of the concerns by letter dated January 7, 1999 (administrative record no. NM-815). New Mexico responded in a letter dated December 1, 1999, by submitting a revised amendment and additional explanatory information (administrative record no. NM-816).

Based upon New Mexico's revisions to its amendment, we reopened the public comment period in the December 22, 1999 **Federal Register** (64 FR 71698, administrative record No. NM-818). The public comment period ended on January 21, 2000.

During our review of the amendment, we identified concerns and notified New Mexico of the concerns by letter dated March 27, 2000 (administrative record no. NM-827). New Mexico responded in a letter dated April 26, 2000, by submitting a revised amendment and additional explanatory information (administrative record no. NM-829).

Based upon New Mexico's revisions to its amendment, we reopened the public comment period in the June 7, 2000 **Federal Register** (65 FR 36101, administrative record No. NM-833). The public comment period ended on June 22, 2000.

#### III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. As discussed below, we are approving the amendment.

##### 1. 19 NMAC 8.2 107.M(1) and 19 NMAC 8.2 107.0(2). Definitions of "Material Damage" and "Occupied Residential Dwelling and Associated Structures"

OSM required at 30 CFR 931.16(w) that New Mexico revise 19 NMAC 8.2 107.M(1), the definition of "Material Damage," and 19 NMAC 8.2 107.0(2), the definition of "Occupied Residential Dwelling and Associated Structures," to add references to the performance standards pertaining to repair of subsidence-caused damages at 19 NMAC 8.2 2067, 2070, and 2072, concerning general requirements for subsidence control, rebuttable presumption of causation by subsidence, and the requirement to adjust the bond amount for subsidence. New Mexico's definitions already included a reference to 19 NMAC 8.2 2069, concerning surface owner protection. (See finding No. 5.a, 61 FR 26825 at 26827, May 29, 1996.)

New Mexico proposed to revise 19 NMAC 8.2 107.M(1), the definition of "Material Damage," and 19 NMAC 8.2 107.0(2), the definition of "Occupied Residential Dwelling and Associated Structures," to reference 19 NMAC 8.2 2067, and 2069 through 2072.

The Director finds that New Mexico has satisfied the required amendment codified at 30 CFR 931.16(w) and that New Mexico's definitions of "Material Damage" and "Occupied Residential Dwelling and Associated Structures" are as effective as the counterpart Federal definitions at 30 CFR 701.5. The Director approves proposed NMAC 8.2 107.M(1) and 19 NMAC 107.0(2) and removes the required amendment at 30 CFR 931.16(w).

##### 2. 19 NMAC 8.2 1107, Improvidently Issued Permits—Violations Review Criteria

OSM required at 30 CFR 931.16(y) that New Mexico revise 19 NMAC 8.2 1107, concerning improvidently issued permits, to include the violations review criteria that the Director of the New Mexico program would use to determine

what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued (See finding No. 11, 61 FR 26825, 26829, May 29, 1996).

New Mexico proposed to revise 19 NMAC 8.2 1107 to include a reference to the applicable violations review criteria contained in the preamble to the Federal rules at 54 FR 18438, 18440–18441 (April 28, 1989). The Director finds that New Mexico has satisfied the required amendment and that New Mexico's proposed rule is as effective as the counterpart Federal regulation at 30 CFR 773.20(b)(1). Therefore, the Director approves the proposed revision at 19 NMAC 8.2 1107 and removes the required amendment at 30 CFR 931.16(y).

*3. NMAC 8.2 909.E(5) and 19 NMAC 2017.D, F(2), G(4), and G(5), Design, Construction, and Inspection Requirements for Ponds and Impoundments*

OSM required at 30 CFR 931.16(x) that New Mexico revise 19 NMAC 8.2 909.E(5); and 19 NMAC 2017.D, F(2)(i), (ii), and (iii), G(4) and G(5) to incorporate the design, construction, and inspection requirements pertaining to those sedimentation ponds and impoundments that meet or exceed the Class B or C criteria for dams in Technical Release No. 60 (210–VI–TR60, October 1985), *i.e.*, the hazardous classification criteria (TR–60) published by the U.S. Department of Interior, National Resource Conservation Service. (See finding Nos. 7.a and 7.b, 61 FR 26825, 26827, May 29, 1996.)

New Mexico proposed to revise 19 NMAC 8.2 909.E(5) and 19 NMAC 2017.D, F(2)(i), (ii), and (iii), G(4), and G(5) to incorporate the requirements for design, construction, and inspection of ponds, impoundments, banks, dams, and embankments that meet or exceed the Class B or C criteria of TR–60.

The Director finds that New Mexico has satisfied the required amendment and that New Mexico's proposed rules are as effective as the counterpart Federal regulations at 30 CFR 780.25(f), 816.49(a)(9)(ii)(A) and (C), 816.49(a)(11)(iv), and 816.49(a)(12) and 817.49(a)(9)(ii)(A) and (C), 817.49(a)(11)(iv), and 817.49(a)(12). Therefore, the Director approves the proposed revisions at 19 NMAC 8.2 909.E(5) and 19 NMAC 2017.D, F(2), G(4), and G(5) and removes the required amendment at 30 CFR 931.16(x).

*4. 19 NMAC 8.2 2065.B(5)(iv), Ground Cover Requirements for Lands To Be Developed for Recreation and Shelterbelts*

OSM required at 30 CFR 931.16(o) that New Mexico revise 19 NMAC 8.2 2065.B to provide ground cover requirements for lands to be developed for recreation and shelterbelts. (See finding No. 16(e), 58 FR 65907, 65920, December 17, 1993.)

New Mexico proposed to revise 19 NMAC 8.2 2065.B(5)(iv) to include revegetation standards for ground cover on land developed for creation and shelterbelts.

The Director finds that New Mexico has satisfied the required amendment and that New Mexico's proposed rule is as effective as the counterpart Federal regulations at 30 CFR 816.116(b)(3)(iii). Therefore, the Director approves the proposed revision at 19 NMAC 8.2 2065.B(5)(iv) and removes the required amendment at 30 CFR 931.16(o).

*5. 19 NMAC 8.2 918.D and 2071.A Through D., Detailed Plans of Underground Mining Operations and Subsidence Buffer Zones*

New Mexico proposed to revise its program by adding 19 NMAC 8.2 918.D and 2071.A through D, concerning detailed plans of underground mining operations and protection from subsidence-caused damages.

New Mexico proposed, at 19 NMAC 8.2 918.D, to add provisions concerning (1) the submission of detailed plans of the underground workings, which will include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority; and (2) the opportunity for an operator to request that certain information submitted with the detailed plan be held as confidential. New Mexico's proposed rules at 19 NMAC 8.2 918.D are the same as the counterpart Federal regulations at 30 CFR as 817.121(g).

New Mexico proposed, at 19 NMAC 8.2 2071, to add provisions concerning prohibition of underground mining beneath or adjacent to public buildings and facilities; churches, schools, and hospitals; or impoundments with a storage capacity of 20 acre-feet, unless the Director of the New Mexico program finds that the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such

features or facilities. New Mexico's proposed rules at 19 NMAC 8.2 2071 also provide that (1) if the Director of the New Mexico program determines that it is necessary to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, the Director may limit the percentage of coal extracted; (2) if subsidence does cause material damage to these features, the Director of the New Mexico program may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities; and (3) the Director of the New Mexico program will suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

New Mexico's proposed rule at 19 NMAC 8.2 2071 is the same as the Federal regulations at 30 CFR 817.121 (d), (e), and (f), with the following exceptions.

The Federal regulations at 30 CFR 817.121(d) provide for protection of impoundments or bodies of water with a volume of 20 acre-feet or more. New Mexico's proposed rules at 19 NMAC 2701 provide only for protection of impoundments with a volume of 20 acre-feet or more. New Mexico explained that the State contains few bodies of water, 20 acre-feet or more, that are not man-made impoundments and that there are no naturally occurring bodies of water that are 20 acre-feet or more in the coal fields in the State. Therefore, the Director finds that New Mexico's proposed rules at 19 NMAC 8.2 2071 are as effective as the Federal regulations at 30 CFR 817.121(d).

The Federal regulations at (1) 30 CFR 817.121(d) provide for the ability of the regulatory authority to limit (prior to mining) the percentage of coal extracted in order to protect public buildings from material damage due to planned subsidence and (2) 30 CFR 817.121(e), the ability of the Director, if material damage is caused to public buildings, to suspend mining until the subsidence control plan is modified to ensure prevention of further material damage to such features. New Mexico's proposed rule at 19 NMAC 8.2 2071.C does not specifically provide for these provisions with respect to protection of public buildings. However, because New Mexico's proposed rule at 19 NMAC 8.2

2071.C prohibits mining beneath or in close proximity to any public building, the Director finds that New Mexico does have the authority to limit (prior to mining) the percentage of coal extracted in order to protect public buildings. New Mexico's proposed rules at 19 NMAC 8.2 2701 requires that New Mexico find, on the basis of the subsidence control plan, that subsidence will not cause material damage to public buildings. If material damage due to planned subsidence does occur to a public building, the operator would not be mining in accordance with the basis of finding for approval of the subsidence control plan. Therefore, the Director finds that New Mexico would have the authority to suspend mining should planned subsidence cause material damage to public buildings.

Based on the above discussion, the Director finds that New Mexico's proposed 19 NMAC 8.2 918.D and 2071 is as effective as the Federal regulations at 30 CFR 817.121 (d) through (g). Therefore, the Director approves 19 NMAC 8.2 918.D and 2071.

#### 6. 19 NMAC 8.2 2072, *Adjustment of Bond Amount*

OSM required at 30 CFR 931.16(aa) that New Mexico revise 19 NMAC 8.2 2072 to clearly require adjustment of the bond amount when subsidence-related contamination, diminution, or interruption to a water supply occurs. (See finding No. 5.b, 61 FR 26825, 26827, May 29, 1996.)

New Mexico proposed to revise 19 NMAC 8.2 2072 to require adjustment of the bond amount when subsidence-related contamination, diminution, or interruption to a water supply occurs.

The Director finds that New Mexico has satisfied the required amendment and that New Mexico's proposed rule at 19 NMAC 8.2 2072 is as effective as the counterpart Federal regulation at 30 CFR 817.121(c)(5). Therefore, the Director approves 19 NMAC 8.2 2072 and removes the required amendment 30 CFR 931.16(aa).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (administrative record Nos. NM-807 and NM-817).

The Navajo Nation commented, by letter dated January 21, 2000 (administrative record No. 821), that it was unclear from the two December 22, 1999, **Federal Register** notices (64 FR 71698 and 64 FR 71700), which published OSM's receipt of three New Mexico amendments (including the

amendment that is the subject of this document), that there would be an opportunity for public comment prior to OSM's decision on the amendments.

The text of December 22, 1999, **Federal Register** notices identified the changes proposed by New Mexico, notified the public of its right to comment and/or request a public hearing or meeting, and provided for a thirty day public comment period on the proposed New Mexico amendments. The public comment period for the New Mexico amendments closed on January 21, 2000. OSM explained to the Navajo Nation, in a letter dated February 7, 2000 (administrative record No. NM-823), that OSM's published **Federal Register** notices, as well as OSM's distribution of the proposed amendment to interested parties (which included the Navajo Nation) by letters dated April 1, 1996, November 23, 1998, and December 15, 1999, were the vehicles by which OSM provided for a public comment period and solicited public comments.

The Director is taking no further action in response to these comments in the Navajo Nation's January 21, 2000, letter.

##### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (administrative record Nos. NM-807 and NM-817).

The U.S. Department of Agriculture, Forest Service, Southwestern Region, commented, by letter dated December 9, 1998 (administrative record No. NM-811), that it had no comments.

The U.S. Department of Army, Corps of Engineers, commented, by dated December 28, 1999 (administrative record No. NM-820), that it found the proposed changes to be satisfactory.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in this amendment pertain to air or water quality standards. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (administrative record Nos. NM-807 and NM-817). EPA did not respond to our request.

##### *State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. We requested comments on New Mexico's amendment from the SHPO and ACHP (administrative record Nos. 807 and 817); neither SHPO nor ACHP responded to our request.

#### V. Director's Decision

Based on the above findings, we approve New Mexico's November 13, 1998, amendment as revised on December 1, 1999 and April 26, 2000.

We approve, as discussed in:

(1) Finding No. 1, 19 NMAC 8.2 107.M(1) and 19 NMAC 107.O(2), concerning the definitions of "Material Damage," and "Occupied Residential Dwelling and Associated Structures;"

(2) Finding No. 2, 19 NMAC 8.2 1107, concerning improvidently issued permits;

(3) Finding No. 3, 19 NMAC 8.2 909.E(5) and 19 NMAC 2017.D, F(2), G(4), and G(5), concerning pond and impoundment design, construction, and inspection requirements; and

(4) Finding No. 4, 19 NMAC 8.2 2065.B(5)(iv), concerning ground cover requirements for lands to be developed for recreation and shelterbelts; and

(5) Finding No. 5, 19 NMAC 8.2 918.D and 2071.A through D., concerning detailed plans of underground mining and subsidence buffer zones.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 931, which codify decisions concerning the New Mexico program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage States to make their programs conform with the Federal standards. SMCRA requires consistency of State and Federal Standards.

#### VI. Procedural Determinations

##### *1. Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

##### *2. Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

##### *3. Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the

roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

#### 4. Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### 5. National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program

provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

#### 6. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### 7. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject to this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

#### 8. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based

upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### 9. Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on any local, State, or Tribal governments or private entities.

#### List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 23, 2000.

**Brent T. Wahlquist,**

*Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR 931 is amended as set forth below:

#### PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

#### § 931.15 Approval of New Mexico regulatory program amendments.

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
November 13, 1998 ...	September 11, 2000	19 NMAC 8.2 107.M(1); 107.O(2); 1107; 909.E(5); 918.D; 2017.D, F(2), G(4), and G(5); 2065.B(5)(iv); and 2071.A through D.

**§ 931.16 [Amended]**

3. Section 931.16 is amended by removing and reserving paragraphs (o), (w), (x), (y), and (aa).

[FR Doc. 00-23234 Filed 9-8-00; 8:45 am]

BILLING CODE 4310-05-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 117**

[CGD01-00-209]

**Drawbridge Operation Regulations:  
Hackensack River, NJ**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the NJTRO Lower Hack Bridge, at mile 3.4, across the Hackensack River in Jersey City, New Jersey. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position from 10 p.m. Friday through 5 a.m. on Monday for four consecutive weeks. This action is necessary to facilitate mechanical repairs at the bridge.

**DATES:** This deviation is effective from September 8, 2000, through October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Judy Yee, Project Officer, First Coast Guard District, at (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The NJTRO Lower Hack Bridge, at mile 3.4, across the Hackensack River in Jersey City, New Jersey, has a vertical clearance of 45 feet at mean high water, and 40 feet at mean low water in the closed position.

The existing operating regulations in 33 CFR 117.723(b) require the bridge to open on signal if at least one-hour advance notice is given to the drawtender at the Upper Hack Bridge, mile 6.9, at Secaucus, New Jersey. In the event the HX drawtender is at the Newark/Harrison (Morristown Line) Bridge, mile 5.8, on the Passaic River, up to an additional half hour delay is permitted.

The bridge owner, New Jersey Transit, requested a temporary deviation from the drawbridge operating regulations to facilitate mechanical repairs at the bridge.

This deviation to the operating regulations allows the owner of the NJTRO Lower Hack Bridge to keep the bridge in the closed position from 10

p.m. on Friday through 5 a.m. on Monday for four consecutive weeks as follows:

- Friday, September 8 through Monday, September 11, 2000.
- Friday, September 15 through Monday, September 18, 2000.
- Friday, September 22 through Monday, September 25, 2000.
- Friday, September 29 through Monday, October 2, 2000.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 29, 2000.

**G.N. Naccara,**

*Rear Admiral, U.S. Coast Guard, Commander,  
First Coast Guard District.*

[FR Doc. 00-23260 Filed 9-8-00; 8:45 am]

BILLING CODE 4910-15-U

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 117**

[CGD08-00-024]

**Drawbridge Operating Regulation;  
Bayou Du Large, LA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117 governing the operation of the swing span bridge across Bayou Du Large, mile 22.6, at Theriot, Louisiana. This deviation allows the Terrebonne Parish Consolidated Government to close the bridge to navigation from 6 a.m. on September 22, 2000 through 7 p.m. on October 1, 2000. Presently, the draw is required to open on signal. This temporary deviation is issued to allow for repairs to be made to the pivot pier substructure and foundation.

**DATES:** This deviation is effective from 6 a.m. on September 22, 2000 through 7 p.m. on October 1, 2000.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), 501 Magazine Street, New Orleans, Louisiana, 70130-3396. The Bridge Administration Branch

maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 589-2965.

**SUPPLEMENTARY INFORMATION:** The Brady Road swing span bridge across Bayou Du Large, mile 22.6, near Theriot, Terrebonne Parish, Louisiana, has a vertical clearance of 5 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists primarily of fishing vessels, and recreational craft. The Terrebonne Parish Consolidated Government requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving jacking up the swing span and driving new foundation pilings to support and level the pivot pier. This maintenance is essential for the continued operation of the bridge.

This deviation allows the draw of the Brady Road swing span drawbridge across Bayou Du Large, mile 22.6, to remain closed to navigation from 6 a.m. on September 22, 2000 through 7 p.m. on October 1, 2000.

Dated: August 30, 2000.

**Paul J. Pluta,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Eighth Coast Guard District.*

[FR Doc. 00-23262 Filed 9-8-00; 8:45 am]

BILLING CODE 4910-15-U

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[COTP San Juan 00-065]

RIN 2115-AA97

**Safety Zone Regulation for San Juan  
Harbor, Puerto Rico**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; removal.

**SUMMARY:** The Coast Guard established a temporary safety zone within a 1500 feet radius surrounding the drill boat APACHE while it is engaged in drilling or blasting operations at the entrance of San Juan Harbor, Puerto Rico. The regulation was published in the **Federal Register** of July 21, 2000 (65 FR 45293). A second safety zone for the same area was published in error in the **Federal Register** of July 26, 2000 (65 FR 45908). To ensure the safety of personnel and to protect vessels in the vicinity of the drilling and blasting operations this

temporary rule removes the second safety zone.

**DATES:** This rule is effective September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Robert Lefevers, Chief of Port Operations, Coast Guard Marine Safety Office San Juan, telephone (787) 706-2440.

**ADDRESSES:** Documents indicated in this preamble are available in the docket, are part of docket COTP San Juan 00-065, and are available for inspection or copying at the USCG Marine Safety Office, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, between the hours of 7:30 a.m. to 3:30 p.m., Monday through Friday, excluding federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It is contrary to the public interest to publish an NPRM for an existing regulation that was published in error.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The second regulation that established the safety zone surrounding the drill boat APACHE requires immediate removal in order to limit public confusion and to protect vessels and personnel in the vicinity of the drilling and blasting operations in San Juan Harbor, Puerto Rico.

**Background and Purpose**

The Coast Guard established a temporary safety zone within a 1500 foot radius surrounding the drill boat *Apache* while it is engaged in drilling or blasting operations at the entrance of San Juan Harbor, Puerto Rico. The regulation was published in the **Federal Register** of July 21, 2000 (65 FR 45293). A second safety zone for the same area was published in error in the **Federal Register** of July 26, 2000 (65 FR 45908). To ensure the safety of personnel and to protect vessels in the vicinity of the drilling and blasting operations this temporary rule removes the second safety zone.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary as this rule removes an unnecessary regulation.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**The Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

**Environment**

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Safety measures, Waterways.

For the reasons discussed in the Preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED AREAS AND LIMITED NAVIGATION AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

**§ 165.T00-065 [Removed]**

2. Remove § 165.T00–065.

Dated: August 30, 2000.

**J. Servidio,**

*Commander, U.S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.*

[FR Doc. 00–23259 Filed 9–8–00; 8:45 am]

**BILLING CODE 4910–15–U**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[CGD07–00–086]

**RIN 2115–AE84**

**Regulated Navigational Area: Sanibel, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary regulated navigation area at the Sanibel Island Bridge “A” span. This regulated navigation area is needed to protect the public from the hazards resulting from damage caused to the west side fender system and the unprotected bridge support pilings. This rule implements vessel operating requirements until the damage is repaired.

**DATES:** This rule is effective from 11:15 a.m. August 25, 2000, to 8 a.m. on December 5, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD07–00–086) and are available for inspection or copying at, Marine Safety Office Tampa between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, FL 33606, Attn: Lieutenant Warren Weedon, or phone (813) 228–2189 ext 101.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this

regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because immediate action is necessary to minimize potential danger to the public from large vessel traffic transiting through the recently damaged bridge.

Further, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is necessary to minimize potential danger to the public from large vessel traffic transiting through the recently damaged bridge.

**Background and Purpose**

At approximately 8 p.m. on August 17, 2000, a barge collided with the west side of the fendering system of the Sanibel Island Bridge “A” span at Sanibel, Florida. The west side fender system and associated dolphins were destroyed leaving the bridge support pilings unprotected. This drawbridge connects Sanibel Island to the mainland, and spans San Carlos Bay, a waterway that provides access to the Intercoastal Waterway. Occasional barge traffic transits the waterway under this bridge. The potential risk of these transits is increased because of the recent damage and therefore all barge traffic transiting under the Sanibel Island “A” span will be limited to slack water transits only. Further, all barges shall have two tugs made fast fore and aft of the barge, respectively, each with adequate horsepower to fully maneuver the barge. Tides through the bridge occur twice daily, providing four (4) slack water periods of approximately one and one-half (1 ½) hours per period. Repair crews have begun removal of the damaged fender and may be operating in or near the channel. The scheduled completion of repairs is approximately 90 days.

**Regulatory Evaluation**

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Vessel traffic affected by this rule can either enter the San Carlos Bay via alternate passages to the north, or schedule their transit for slack water periods.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of barges intending to transit the waterway under the bridge. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons.

This rule will be in effect for a limited time until the bridge fendering system is repaired. Further, alternate routes to the north of the Sanibel Island Bridge are available for barge traffic or barges can schedule their transit during slack water.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

## Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

## Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. The environmental analysis checklist and Categorical Exclusion Determination will be prepared after the rule takes effect and will be available in the docket for inspection or copying where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Temporary § 165.T07–086 is added to read as follows:

### § 165.T07–086 Regulated Navigational Area, San Carlos Bay, Sanibel Island Bridge “A” span, Sanibel, Florida.

(a) *Location.* The following area is a regulated navigation area. All water under the main bridge span of Sanibel Island bridge extending 100 feet on either side of the bridge within the main channel.

(b) *Regulated area.* In accordance with the regulations of this part, no vessel may operate within the regulated navigational area contrary to this regulation. All barges shall have two tugs made fast fore and aft of the barge, respectively, each with adequate horsepower to fully maneuver the barge. Barges shall only transit the area at slack water. Smaller vessels are not limited to transiting at slack water but shall stay clear of the damaged section of the fendering system and work vessels operating in the vicinity. The Captain of the Port Tampa will notify the public of changes in the status of this zone via Broadcast Notice to Mariners.

(c) *Effective dates.* This regulation becomes effective at 11:15 a.m., August 25, 2000, and terminates at 8 a.m. on December 5, 2000.

Dated: August 25, 2000.

**G.W. Sutton,**

*Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.*

[FR Doc. 00–23257 Filed 9–8–00; 8:45 am]

**BILLING CODE 4910–15–U**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 8

**RIN 2900–AJ35**

### Cash Values for National Service Life Insurance (NSLI) and Veterans Special Life Insurance Term-Capped Policies

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) regulations regarding National Service Life Insurance (NSLI) and Veterans Special Life Insurance (VSLI) by providing cash values for NSLI and VSLI term-capped policies and further providing the options to either receive

the cash value in a lump sum or to purchase paid-up insurance upon the termination of the contract before maturity.

**EFFECTIVE DATES:** *Date:* September 11, 2000.

### FOR FURTHER INFORMATION CONTACT:

George Poole, Chief of Insurance Program Administration and Oversight, PO Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000, ext. 4286; (215) 842–2000, ext. 5012 (voicemail); (215) 381–3502 (fax); or e-mail at “issgpool@VBA.VA.GOV”.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on February 15, 2000 (65 FR 7467), we proposed to provide cash values for NSLI and VSLI term-capped policies and further provide the options to either receive the cash value in a lump sum or to purchase paid-up insurance upon the termination of the contract before maturity.

We received two comments. Both supported the proposed rule. Accordingly, based on the rationale set forth in the proposed rule we are adopting the proposed rule as a final rule without any changes.

The Acting Secretary of the Department of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), this final rule is, therefore, exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604. The final regulation will affect only government life insurance policyholders. It will, therefore, have no significant direct impact on small entities in the terms of compliance costs, paperwork requirements, or effects on competition.

The catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

### List of Subjects in 38 CFR Part 8

Disability benefits, Life insurance, Loan programs-veterans, Military personnel, Veterans.

Approved: August 29, 2000.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR Part 8 is amended as follows:

## PART 8—NATIONAL SERVICE LIFE INSURANCE

1. The authority citation for part 8 continues to read as follows:

**Authority:** U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

2. Section 8.37 is added to read as follows:

**§ 8.37 Cash value for term-capped policies.**

(a) *What is a term-capped policy?* A term-capped policy is a National Service Life Insurance policy prefixed with “V” or Veterans Special Life Insurance policy prefixed with “RS,” issued on a 5-year level premium term plan in which premiums have been capped (frozen) at the renewal age 70 rate.

(b) *How can a term-capped policy accrue cash value?* Normally, a policy issued on a 5-year level premium term plan does not accrue cash value (see section 8.14). However, notwithstanding any other provisions of this part, reserves have been established to provide for cash value for term-capped policies.

(c) *On what basis have the reserve values been established?* Reserve values have been established based upon the 1980 Commissioners Standard Ordinary Basic Table and interest at five per centum per annum in accordance with accepted actuarial practices.

(d) *How much cash value does a term-capped policy have?* The cash value for each policy will depend on the age of the insured, the type of policy, and the amount of coverage in force and will be calculated in accordance with accepted actuarial practices. For illustrative purposes, below are some examples of cash values based upon a \$10,000 policy at various attained ages for an NSLI “V” policy and a VSLI “RS” policy:

Age	Cash value “V”	Cash value “RS”
75 .....	\$1,494	\$1,716
80 .....	3,212	3,358
85 .....	4,786	4,818
90 .....	6,249	6,217
95 .....	8,887	7,286

(e) *What can be done with this cash value?* Upon cancellation or lapse of the policy, a policyholder may receive the cash value in a lump sum or may use the cash value to purchase paid-up insurance. If a term-capped policy is kept in force, cash values will continue to grow.

(f) *How much paid-up insurance can be obtained for the cash value?* The amount of paid-up insurance that can be purchased will depend on the amount of cash value that the policy has accrued and will be calculated in accordance with accepted actuarial practices. For illustrative purposes, below are some examples of paid-up insurance that could be purchased by the cash value of

a “V” and an “RS” \$10,000 policy at various attained ages:

Age	Paid-up “V” insurance	Paid-up “RS” insurance
75 .....	\$2,284	\$2,625
80 .....	4,452	4,654
85 .....	6,109	6,149
90 .....	7,421	7,115
95 .....	9,331	7,650

(g) *If the policy lapses due to non-payment of the premium, does the policyholder nonetheless have a choice of receiving the cash value or paid-up insurance?* Yes, the policyholder will have that choice, along with the option to reinstate the policy (see section 8.10 for reinstatement of a policy). However, if a policyholder does not make a selection, VA will apply the cash value to purchase paid-up insurance. Paid-up insurance may be surrendered for cash at any time.

(h) *If a policyholder elects to receive either the cash surrender or paid-up insurance due to lapse or voluntary cancellation of a term-capped policy, may the original term-capped policy be reinstated?* Yes, the term-capped policy may be reinstated but the policyholder, in addition to meeting the reinstatement requirements of term policies, must also pay the current reserve value of the reinstated policy.

(Authority: 38 U.S.C. 1906)

[FR Doc. 00–23201 Filed 9–8–00; 8:45 am]

**BILLING CODE 8320–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[IB Docket No. 98–118; FCC 99–51]

### Cable Landing Licenses, Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the correction to the biennial review of international common carrier regulations published in the **Federal Register** of August 25, 2000. Inadvertently, the rule contained an incorrect word. This document corrects that error.

**DATES:** Effective September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Peggy Reitzel, International Bureau, Telecommunications Division, Federal Communications Commission, and (202) 418–1499.

**SUPPLEMENTARY INFORMATION:** The FCC published a correction document in the **Federal Register** of August 25, 2000, (65 FR 51768). In that document, § 1.767(e) contained an incorrect word. On page 51769, in the first column, in § 1.767(e), in the fourth line, the word “required” is corrected to read “requested”.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

[FR Doc. 00–23155 Filed 9–8–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 92–105; FCC 00–257]

### Require 711 Dialing for Nationwide Access to Telecommunications Relay Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (the Commission) amends its regulations to require that all providers of telephone service in the United States provide toll-free access to telecommunications relay services (TRS) via the abbreviated dialing code 711. The Commission takes this action to further a mandate of the Americans with Disabilities Act for functionally equivalent use of the telephone network by people with hearing or speech disabilities. 711 dialing must access all types of relay service in accordance with the Commission’s minimum service-quality standards for TRS.

**DATES:** Effective October 11, 2000. Compliance is required by October 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dennis Johnson or Jamal Mazrui of the Network Services Division, Common Carrier Bureau at phone (202) 418–2320 or TTY (202) 418–0484. E-mail inquiries may also be sent to [access@fcc.gov](mailto:access@fcc.gov), and various information about TRS can be found at the web address <http://www.fcc.gov/cib/dro/trs>.

**SUPPLEMENTARY INFORMATION:** This document summarizes the Second Report and Order in a rulemaking proceeding concerned with The Use of N11 Codes and Other Abbreviated Dialing Arrangements. The Commission adopted the order on July 21, 2000 and released it on August 9, 2000. The complete text of this Second Report and Order is available for inspection and copying during normal business hours

in the FCC Reference Center, 445 Twelfth Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. The document is also available via the Internet at [http://www.fcc.gov/Bureaus/Common\\_Carrier/Orders/2000/fcc00257.doc](http://www.fcc.gov/Bureaus/Common_Carrier/Orders/2000/fcc00257.doc)

### Synopsis of the Report and Order

1. In this Second Report and Order, we take another significant step toward fulfilling the goals of Title IV of the Americans with Disabilities Act of 1990 (ADA) by requiring the nationwide implementation of access to telecommunications relay services (TRS) for persons with hearing or speech disabilities via the abbreviated dialing code 711. By October 1, 2001, all types of relay service must be available through 711 dialing in accordance with the Commission's mandatory minimum service-quality standards for TRS.

2. The Commission first promulgated rules to implement Section 225 of the ADA in 1991, and telecommunications relay services became available on a uniform, nationwide basis pursuant to those requirements in July 1993.

3. In February 1997, the Commission issued the N11 First Report and Order and Further Notice in CC Docket No. 92-105, 62 FR 8633 (February 26, 1997). Among other things, it directed Bellcore, the North American Numbering Plan (NANP) administrator at that time, to reserve 711 for nationwide access to TRS. The Commission concluded that 711 dialing would facilitate improved access to TRS in furtherance of section 225 and other provisions of the Communications Act of 1934, as amended. In the accompanying Further Notice of Proposed Rulemaking (N11 Further Notice), the Commission sought comment on whether nationwide 711 implementation was technically and economically feasible, whether the 711 number should access all types of relay service, and whether implementation could occur within three years from the date of the N11 Further Notice. In September 1999, the Commission held a public forum on 711 implementation in order to supplement and update the record in this docket with input from consumers, state relay administrators, and industry representatives.

4. The new 711 dialing arrangement will supplement existing systems in most states that require 7 or 10-digit numbers in order to initiate relay calls. TRS users will then be able to initiate

a call from any telephone, anywhere in the United States, without having to remember and dial a 7 or 10-digit toll free number, and without having to obtain different numbers to access local TRS providers when traveling from state to state. 711 access will also facilitate callbacks from voice users who may be unfamiliar with relay services and be frustrated when having to place a TRS call.

5. We are satisfied that both switch-based and AIN technologies will deliver 711 access to TRS at acceptable quality levels and comport with mandatory minimum service quality requirements under the Act and our rules. We conclude that it is technically feasible to provide 711 access to TRS using either AIN or switch-based technology, and do not mandate any particular approach for 711 implementation.

6. We conclude that 711 dialing can be implemented so as to provide access to all types of relay service, while still meeting the Commission's minimum service-quality standards for TRS, including the "Speed of Answer" requirement. We still encourage the continuation of alternate, direct access numbers to reach particular types of relay services. This will enable frequent users of specific services, such as text-based TRS, voice carryover, and speech-to-speech relay to maximize call-processing efficiency. We also encourage relay providers to use caller profiling with 711 access, which allows users to designate their preferred type of relay service. This, in turn, speeds call processing by enabling TRS centers to answer calls using the appropriate mode of communication.

7. We find that, based on the record in this proceeding, it is feasible for all telecommunications carriers, including wireline, wireless, and payphone providers, to implement 711 access to TRS in accordance with Commission standards within one year, regardless of whether the carrier deploys switch-based or AIN-based technology.

8. We expect wireless carriers, relay providers, and any other relevant parties to work together to fulfill all of the requirements established in this Order, by the one-year implementation deadline, in addition to fulfilling existing requirements under our TRS rules. We note that states may need to modify their contracts with relay providers to facilitate this arrangement. We encourage the states to do so as expeditiously as possible.

9. We strongly encourage wireless carriers, relay providers, and other relevant parties to work together in an industry forum or other appropriate collaborative process to develop

solutions to implement 711 access to TRS in accordance with our rules.

10. If within 4 months of the effective date of this Order, wireless carriers believe that they will not be able to resolve these implementation issues in a timely manner, we urge them, either individually or collectively, to file a report with the Commission stating that their ability to comply with the one-year deadline is in jeopardy. We also encourage relay providers to file a similar report if they deem it necessary.

11. Such a report should contain specific details of any collaborative efforts to date, including a timeline, details of the implementation issues resolved and of outstanding issues or other problems causing the jeopardy, and the names and necessary contact information for the individuals participating in any collaborative efforts. The report should estimate the impact of the problem, including anticipated delay and/or restrictions to market coverage or feature support.

12. We expect that these "jeopardy" reports will form the basis for discussions with the Commission about possible solutions to the outstanding implementation issues. If we do not receive a report of this nature, we will assume that the ability to comply with the one-year timeframe is not in jeopardy. Moreover, as we reminded carriers in the Improved TRS Order, if necessary, the Commission may consider enforcement action, including forfeitures, should carriers fail to meet their obligations regarding access to relay services.

13. We also recognize that companies providing PBX equipment to businesses and organizations will need to program their PBXs to enable 711 dialing to TRS centers from their user locations. Because many individuals work for companies and organizations that utilize PBXs, modifying PBXs to accommodate 711 dialing is essential to ensuring that all Americans have the opportunity to benefit from this abbreviated dialing arrangement.

14. Our rules provide for specific cost recovery mechanisms for costs related to relay providers' provision and maintenance of TRS, and therefore, costs that relay providers incur associated with implementation and maintenance of 711 access to TRS.

15. In contrast, there is no specific cost recovery mechanism for carrier implementation of access to TRS service, whether or not such access is accomplished via 711. Carriers bear and recover their own costs associated with providing access to TRS. Recovery of the costs associated with implementing 711 may not fall disproportionately on

TRS users, as all carriers are obligated to ensure that TRS users pay rates no greater than the rates paid for functionally equivalent voice communications services. Carriers may recover education and outreach costs associated with providing access to TRS through 711 in the same manner that they recover other costs associated with implementing 711 access.

16. Wireline carriers may properly include the costs they incur in implementing 711 access to TRS with their joint and common costs and recover those costs from the rates charged for intrastate and interstate services, separated pursuant to the Commission's jurisdictional separation rules. Wireless and other carriers that are neither subject to economic rate regulation nor to the jurisdictional separations rules, may recover their costs of providing access to TRS through 711 in any lawful manner that is consistent with their obligations under 47 U.S.C. 225 (d)(1)(D) and 47 CFR 64.604(c)(4).

17. We find that some of the costs imposed upon relay providers that are associated with the implementation and operation of 711 access to TRS, and education and outreach regarding this service, are likely to be intrastate costs. For costs associated with intrastate minutes of use, we conclude that the states should establish the appropriate cost recovery mechanism as required by section 225(d)(3)(B). Thus, to the extent that the state is certified to provide TRS under section 225 (f) of the Act, the state must permit relay providers that fall under state regulatory jurisdiction to recover intrastate costs related to 711 implementation, including costs associated with education and outreach. We acknowledge that states and relay providers may need to adjust their contracts in order to allow relay providers to recover these costs. We also find, however, that a portion of these costs may be attributable to the provision of interstate TRS.

18. TRS providers shall submit the costs of providing 711 access, including the costs of education and outreach, as part of the annual data report of their total TRS operating expenses, to the interstate TRS Fund Administrator for purposes of computing payment and revenue requirements for the following year. The Fund Administrator must then consider these payment and revenue requirements when establishing the payment formula to compensate TRS providers for reasonable costs associated with 711 access to TRS, including the costs of education and outreach, as well as when determining the contributions

to the fund that interstate telecommunications carriers must make.

19. We conclude that the benefits of 711 access to TRS described in this Order are too great and too immediate to warrant a delay that would result from a Commission requirement to implement presubscription or multivendors at this time.

20. In accordance with our existing rules, we encourage carriers, states, and relay providers to implement education and outreach programs that will increase public awareness and understanding of 711 access to TRS. We encourage carriers, states, and relay providers to be aware of and target specific segments of the market that would benefit from additional information about 711 access.

21. In order to ensure the successful use of 711 access to TRS, we require carriers, in cooperation with relay providers and the states, to engage in on-going and comprehensive education and outreach programs to publicize its availability in a manner reasonably designed to reach the largest number of consumers possible. We recognize that a method that is reasonably designed to reach the largest number of consumers in one state or location may not be equally effective in another location. For that reason, we do not mandate in this Order any specific means of advertising 711 access to TRS. While carriers must continue to utilize bill inserts and provide information in telephone directories pursuant to the Commission's current TRS rules, we also encourage carriers, states, and relay providers to disseminate information through the mainstream media, including newspaper, radio, and television advertisements and articles, which can more effectively reach substantial portions of the American public.

22. Additionally, we encourage the dissemination of information about 711 access through conferences and membership publications of individuals who are deaf, hard of hearing or have speech disabilities, and of senior citizens, to reach significant segments of the population that could benefit from relay services. Furthermore, we suggest that carriers, relay providers, and states should implement an outreach program similar to that used for 911 access to emergency services.

#### **Regulatory Flexibility Act**

23. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the N11 Further Notice. The Commission sought written public comment on the proposals in the

notice, including comment on the IRFA. There were no comments received on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### **A. Need for, and Objectives of, This Report and Order**

24. This rulemaking proceeding was initiated in order to improve the uniformity and efficiency of services provided through telecommunications relay services (TRS) for the benefit of TRS users and members of the general public with whom they communicate. The Commission's goal was to improve the convenience and consistency of dialing for TRS by implementing the 711 code previously reserved for this purpose.

25. In the Notice, the Commission sought public comment on the technical feasibility of implementing 711 access to TRS. The Notice also asked parties: (1) If it would be possible to develop within a reasonable time an N11 "gateway" offering access to multiple TRS providers; (2) whether, with such gateway access, TRS calls would still be answered within the Commission's mandatory minimum standards for TRS answer times; (3) whether such a gateway would be consistent with section 255 of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996; and (4) whether any other important disability services could be accessed through the same gateway. The Notice also requested comment from interested parties, particularly TRS providers, about the possibility of providing both voice and text TRS services through the same abbreviated N11 code (711).

26. In this Second Report and Order, we adopt rules that require all carriers to provide 711 access to all types of relay services. We require all wireline carriers, CMRS carriers, and payphone providers to implement 711 dialing on or before October 1, 2001. We also require carriers and relay providers, in cooperation with the states, to engage in on-going and comprehensive education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible.

27. By requiring uniform, nationwide 711 access to TRS, we further our Congressional mandate under the Americans with Disabilities Act to establish relay services that are functionally equivalent to voice telephone services. We expect that 711 dialing will make TRS easier and more convenient for all Americans. TRS users will be able to initiate a call from any

telephone, anywhere in the United States, without having to remember and dial a 7 or 10-digit number, and without having to search for different numbers to access local TRS providers when traveling from state to state. We also expect an increase in the number of first-initiated and return relay calls by individuals without disabilities.

#### **B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

28. No comments were filed in response to the IRFA.

#### **C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

29. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

30. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of TRS. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. According to our most recent data, there are 11 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 11 small TRS providers that may be affected.

31. The most reliable source of information regarding the total numbers

of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its Trends in Telephone Service report. However, in a recent news release, the Commission indicated that there are 4,144 interstate carriers. These carriers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

32. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. Further, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

33. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected.

34. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The

SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Federal Communications Commission analyses and determinations in other, non-RFA contexts.

35. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities or small ILECs that may be affected.

36. *Competitive Local Service Providers.* This category includes competitive access providers (CAPs), competitive local exchange providers (CLECs), shared tenant service providers, local resellers, and other local service providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive local service providers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Locator data, 145 carriers reported that they were engaged in the provision of competitive local service. We do not have data specifying the number of these carriers that are not independently owned or operated, and thus are unable at this time to estimate with greater precision the number of competitive local service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 145 small entity competitive local service providers.

37. *Wireless Telephony and Paging and Messaging.* Wireless telephony

includes cellular, personal communications service (PCS) and specialized mobile radio (SMR) service providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees, or to providers of paging and messaging services. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent Locator data, 732 carriers reported that they were engaged in the provision of wireless telephony and 137 companies reported that they were engaged in the provision of paging and messaging service. We do not have data specifying the number of these carriers that are not independently owned or operated, and thus are unable at this time to estimate with greater precision the number that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 732 carriers are engaged in the provision of wireless telephony and fewer than 137 companies are engaged in the provision of paging and messaging service.

38. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs.

39. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable

definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Trends in Telephone Service data, 615 carriers reported that they were engaged in the provision of pay telephone services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 615 small entity pay telephone operators.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

40. This order mandates that, on or before October 1, 2001, all carriers must obtain the telephone number for the state-certified relay center in each state of operation. This number can be obtained by contacting either the state agency for TRS or the Federal Communications Commission. The cost of obtaining and maintaining this number on file is nominal for all businesses, including small entities. In addition, all state agencies for TRS must accept and address complaints regarding 711 access to TRS. The annual reports of these state agencies to the Federal Communications Commission must include a summary of such complaints. Therefore, the burden of monitoring complaints and compliance falls not upon small entities, but upon the appropriate state agencies.

#### **E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

41. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

42. We considered the status quo alternative that is, leaving 711 access to TRS up to voluntary, cooperative efforts among carriers, TRS providers, and state

relay administrators. We concluded, however, that uniform, nationwide 711 access to TRS would not occur without a Commission mandate, and without such uniformity, the great benefits of 711 access to TRS would be thwarted. We considered whether to permit compliance exemptions or time extensions for small carriers. Given the Congressional mandate that all carriers facilitate TRS that is "functionally equivalent" to voice transmission services, the burden would be especially high to justify waivers in 711 implementation. Since the record in this docket has shown the economic and technical feasibility of implementing 711 access to TRS by all carriers within a six-month period, we concluded that a year is ample time for all carriers to comply with this Order, including those small entities who might be affected by these new rules.

43. This order focuses on performance not design criteria to achieve 711 access to TRS. We do not require any particular network technology for 711 implementation. We anticipate that larger carriers with AIN technology will use that approach, whereas smaller carriers without it will use a switch-based approach. This latter approach was estimated to require 1.5 labor hours to reconfigure each switch, a cost we consider to be affordable over the course of a year, during which time other switch maintenance would probably occur. We expect that small payphone providers are likely to pass the 711 code to the local switch for translation, rather than making the translation in each of their payphones, thus assuring the affordability of 711 implementation to them.

#### **F. Report to Congress**

44. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of this Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### **Final Paperwork Reduction Act Analysis**

45. The Notice did not propose changes to the Commission's information collection requirements, and therefore, an initial paperwork reduction analysis was not required by the Paperwork Reduction Act of 1995. The Commission certifies that no information collection changes are imposed by the rules adopted in this

order. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and/or record-keeping requirements or burdens on the public.

#### Ordering Clauses

46. Accordingly, pursuant to authority found in sections 1, 4(i) and 4(j), 201–205, 218, 225, and 251(e)(1) of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, 218, 225, and 251(e)(1) this Report and Order *Is Adopted*, and Part 64 of the Commission's rules *Are Amended* as set forth in the rule changes.

47. Each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call.

48. The amendments to §§ 64.601 through 64.604 of the Commission's rules as set forth in the rule changes are *Adopted*, effective October 11, 2000. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and/or record-keeping requirements or burdens on the public.

49. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

50. Pursuant to sections 1, 4(i) and 4(j), 201–205, 218, 225, and 251(e)(1) of the Communications Act as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201–205, 218, 225, and 251(e)(1) this Report and Order is adopted.

#### List of Subjects in 47 CFR Part 64

Communications common carriers, Individuals with disabilities, Relay service, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

#### Rule Changes

For the reasons set forth in the preamble, amend part 64 of title 47 of the Code of Federal Regulations as follows:

#### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1).

2. In § 64.601, paragraphs (1) through (9) are redesignated as paragraphs (2) through (10), and a new paragraph (1) is added to read as follows:

#### § 64.601 Definitions.

(1) *711*. The abbreviated dialing code for accessing all types of relay services anywhere in the United States.

\* \* \* \* \*

3. In § 64.603, the undesignated introductory text is revised to read as follows:

#### § 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Speech-to-speech relay service and interstate Spanish language relay service shall be provided by March 1, 2001. In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call. A common carrier shall be considered to be in compliance with these regulations:

\* \* \* \* \*

4. In § 64.604, add the following sentence to the end of paragraph (c)(3) to read as follows:

#### § 64.604 Mandatory minimum standards.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \* In addition, each common carrier providing telephone voice transmission services shall conduct, not later than October 1, 2001, ongoing education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible.

\* \* \* \* \*

[FR Doc. 00–23156 Filed 9–8–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00–2029, MM Docket No. 00–68; RM–9792]

### Digital Television Broadcast Services; Norfolk, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of WTKR–TV, Inc., licensee of station WTKR–TV, NTSC Channel 3, Norfolk, Virginia, substitutes DTV Channel 40 for station WTKR–TV's assigned DTV Channel 58 at Norfolk. See 65FR 24670, April 27, 2000. DTV Channel 40 can be allotted to Norfolk at coordinates (36–48–56 N. and 76–28–00 W.) with a power of 1000, HAAT of 313 meters and with a DTV service population of 1761 thousand. With this action, this proceeding is terminated.

**DATES:** Effective October 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00–68, adopted September 7, 2000, and released September 8, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virginia, is amended by removing DTV Channel 58 and adding DTV Channel 40 at Norfolk.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00-23271 Filed 9-8-00; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00-2028, MM Docket No. 99-296; RM-9661]

### Digital Television Broadcast Services; Klamath Falls, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of California Oregon Broadcasting, Inc., licensee of Station KOTI-TV, Klamath Falls, Oregon, substitutes DTV Channel 13 for Station KOTI-TV's assigned DTV Channel 40 at Klamath Falls. *See* 64 FR 54269, October 6, 1999. DTV Channel 13 can be allotted to Klamath Falls at coordinates (42-05-48 N. and 121-37-57 W.) with a power of 45.3, HAAT of 671 meters and with a DTV service population of thousand.

With this action, this proceeding is terminated.

**DATES:** Effective October 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99-296, adopted September 6, 2000, and released September 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oregon, is amended by removing DTV Channel 40 and adding DTV Channel 13 at Klamath Falls.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00-23270 Filed 9-8-00; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

[MM Docket No. 99-339; FCC 00-258]

### Implementation of Video Description of Video Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopt rules to require larger broadcast stations and multichannel programming distributors (MVPDs) to provide programming with video description. This document also adopts rules to require all broadcast stations and MVPDs to pass through any video description they receive from their programming suppliers if they have the technical capability necessary to do so. This document also adopts rules to enhance the accessibility of emergency information. The purpose of these actions is to enhance the accessibility of video programming to persons with visual disabilities.

**DATES:** Section 79.3 is effective April 1, 2002. Section 79.2 contains information collection requirements which have not been approved by the Office Of Management Budget ("OMB"). The Commission will publish a document in the **Federal Register** announcing the effective date of this section.

**FOR FURTHER INFORMATION CONTACT:** Eric J. Bash, Policy and Rules Division, Mass Media Bureau, (202) 418-2130 (voice), (202) 418-1169 (TTY), or Meryl S. Icove, Disabilities Rights Office, Consumer Information Bureau, (202) 418-2372 (voice), 418-0178 (TTY), or [micove@fcc.gov](mailto:micove@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order ("R&O"), FCC 00-258, adopted July 21, 2000; released August 7, 2000. The full text of the Commission's R&O is available for

inspection and copying during normal business hours in the FCC Dockets Branch (Room TW-A306), 445 12 St. S.W., Washington, D.C. The complete text of this R&O may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 1231 20th St., N.W., Washington, D.C. 20036.

### Synopsis of Report and Order

#### I. Introduction

1. In this R&O, we adopt rules designed to bring the benefits of video description to the commercial video marketplace but not impose an undue burden on the video programming production and distribution industries. Video description is the description of key visual elements in programming, inserted into natural pauses in the audio of the programming. It is designed to make television programming more accessible to the many Americans who have visual disabilities.

2. As explained further, we conclude that we have the authority to adopt video description rules, and require the top broadcast stations and multichannel video programming distributors (MVPDs) to provide programming with video description on the top programming networks. This will ensure that the broadcast stations and MVPDs that reach the most people will provide video description for the most watched programming. We also adopt rules to enhance the accessibility of emergency information for people with visual disabilities. Specifically, we adopt rules as follows:

- We require affiliates of the top four commercial broadcast TV networks in the top 25 TV markets to provide 50 hours per calendar quarter of prime time and/or children's programming with video description.

- We also require MVPDs with 50,000 or more subscribers to provide 50 hours per calendar quarter of prime time and/or children's programming with video description on each of the top five national nonbroadcast networks they carry.

- In addition, we require any broadcast station, regardless of its market size, to "pass through" any video description it receives from a programming provider, if the broadcast station has the technical capability necessary to do so, and we require any MVPD, regardless of its number of subscribers, to "pass through" any video description it receives from a programming provider, if the MVPD has the technical capability necessary to do so on the channel on which it

distributes the programming of the programming provider.

- The first calendar quarter these rules will be effective will be April–June 2002.

- We also require broadcast stations and MVPDs that provide local emergency information through a regularly scheduled newscast, or an unscheduled newscast that interrupts regularly scheduled programming, to make the critical details of that information accessible to persons with visual disabilities in the affected local area. We also require broadcast stations and MVPDs that provide local emergency information through another manner, such as a “crawl” or “scroll,” to accompany that information with an aural tone to alert persons with visual disabilities that they are providing emergency information. These rules relating to emergency information will become effective upon approval by the Office of Management and Budget.

## II. Background

### A. Audience for Video Description

3. Video description is designed to make television programming more accessible to persons with visual disabilities, and enable them to “hear what they cannot see.” Thus, the primary audience for video description is persons with visual disabilities. Estimates of the number of persons with visual disabilities are as high as twelve million. This estimate includes persons with a problem seeing that cannot be corrected with ordinary glasses or contact lenses, with a range in severity.

4. A disproportionate number of persons with visual disabilities are seniors. The National Center for Health Statistics reports that eye problems are the third leading cause, after heart disease and arthritis, of restricting the normal daily activities of persons 65 years of age or older. While only 2–3% of the population under 45 years of age has visual disabilities, 9–14% of the population 75 years of age or older does. This means that as the population ages, more and more people will become visually disabled.

5. Secondary audiences for video description exist as well. For example, at least one and a half million children between the ages of 6 and 14 with learning disabilities may benefit from video description. Because the medium has both audio description and visual appeal, it has significant potential to capture the attention of learning disabled children and enhance their information processing skills. Described video programming capitalizes on the different perceptual strengths of

learning-disabled children, pairing their more-developed modality with their less-developed modality to reinforce comprehension of information.

### B. Process of Providing Video Description

6. Current describers of programming charge between \$2000 and \$4000 per hour for their service. They begin their process by viewing a program, and writing a script to describe key visual elements. The describer times the placement and length of the description to fit within natural pauses in the dialogue. The narration is recorded and mixed with the original program audio to create a full audio track with video description. That audio track is then laid back to the master on a spare channel if the programming is intended for broadcast, and to a separate master if it is intended for distribution by home video. When the audio track with video description is provided on a separate audio channel for broadcast, viewers decide whether they wish to hear the video description. Viewers who wish to hear the description must activate the Second Audio Program (SAP) channel on their TV sets or VCRs. “Closed” video description refers to the process of providing video description on the SAP channel. SAP reception is a standard feature of most TV sets and VCRs built since 1990. SAP-capable TV sets and VCRs can be relatively inexpensive—less than \$150—and converter boxes are also available for use with TV sets and VCRs that are not SAP-capable.

7. Programming providers that wish to distribute programming on the SAP channel typically need the capability to support three audio channels at all points in the distribution process. This is because two audio channels are used to support left and right stereo, so that a third audio channel is necessary to support a monaural mix of the main audio and the video description. The programming provider transmits both audio tracks as part of its main signal. Networks, broadcast stations, and MVPDs that do not have the capability to support three channels of audio generally need to upgrade equipment and plant wiring to do so. The cost depends on the amount and nature of the equipment that needs to be upgraded.

8. A number of commercial broadcast and nonbroadcast networks have provided programming with Spanish language as a second audio program. Each of the top four commercial broadcast TV networks has provided a Spanish language soundtrack as a second audio program, on at least an occasional basis. At least thirty-three

ABC affiliates have the capability to pass through a second soundtrack on the SAP channel; at least twenty-three Fox affiliates do; and approximately twenty NBC affiliates do. Some nonbroadcast networks, such as HBO and Showtime, also have offered a Spanish language soundtrack as a separate audio program, and, Turner Classic Movies has provided a soundtrack with video description as a separate audio program. Some MVPDs that carry their programming provide the audio on the SAP channel.

## III. Entities To Provide Programming With Video Description

### A. Broadcast Stations in Top 25 DMAs

9. We require broadcast stations in the top 25 Designated Market Areas (DMAs, defined by Nielsen Media Research) affiliated with the top four commercial broadcast networks to provide programming with video description. Our goal in this proceeding is to adopt rules designed to enhance the availability of video description, but not impose an undue burden on programming producers and distributors. Broadcast stations in the top 25 DMAs reach approximately 50% of U.S. TV households. Those affiliated with the top four broadcast networks provide the highest-rated programming, *i.e.*, the most-watched, and therefore the most-advertiser-supported, programming. Some affiliates of the top four networks in the top 25 DMAs already have the technical capability necessary to provide programming with video description. Those that do not are likely to have the resources to acquire that capability without being unduly burdened.

### B. Multichannel Video Programming Distributors With at Least 50,000 Subscribers

10. We also require larger multichannel video programming distributors (MVPDs) that serve 50,000 or more subscribers to provide programming with video description on each of the top five national nonbroadcast networks they carry, as defined by prime time audience share, as well as the programming of broadcast stations and other networks they carry, under certain circumstances, as described. We believe this result is consistent with our goal of enhancing the availability of video description without imposing an undue burden on the programming production and distribution industries. The “larger MVPDs” as we define them include approximately 275 cable systems that serve approximately 50% of MVPD

households, and two DBS systems that serve over 12 million customers. The top five nonbroadcast networks as we define them include those with the most-watched programming during prime time.

11. Because MVPDs must have the capability to support a third audio channel for each channel on which they intend to provide programming with video description, we have decided to limit the number of nonbroadcast networks for which "larger MVPDs" must provide video description to five. Given that we require MVPDs to provide programming with video description during prime time, we define the top five nonbroadcast networks in terms of prime time audience share, as determined by an average of Nielsen prime time ratings for the time period October 1, 1999–September 30, 2000.

12. The per-channel costs for MVPDs also suggests that the cut-off for "larger MVPDs" should be based on cable system size, not on multiple system operator size. We have decided to apply our rules to systems with more than 50,000 subscribers. These systems include approximately 275 cable systems that reach approximately 50% of cable subscribers, just as our rules affect broadcast stations that reach approximately 50% of U.S. TV households. Our decision to apply our rules to MVPDs that serve at least 50,000 subscribers will also include two DBS systems that together reach an additional 12 million subscribers.

#### *C. Equipped Broadcast Stations and MVPDs*

13. We further require all broadcast stations, including noncommercial educational stations, that have the technical capability necessary to "pass through" any second audio program containing video description that they receive from their affiliated networks. Similarly, we require all MVPDs that have the technical capability necessary to "pass through" any secondary audio program containing video description that they receive from a broadcast station or nonbroadcast network. We believe this requirement is consistent with our approach to enhance the availability of video description, but not impose an undue burden on programming producers and distributors. We will consider broadcast stations and MVPDs to have the technical capability necessary to support video description if they have virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost.

### **IV. Programming To Contain Video Description**

#### *A. Amount of Programming*

14. We require broadcast stations in the top 25 DMAs and MVPDs with at least 50,000 subscribers to provide at least fifty hours per calendar quarter of programming with video description. Our goal in this proceeding is to bring the benefits of video description to the commercial video marketplace, while at the same time not impose an undue burden on the broadcast stations and MVPDs subject to our initial rules. We believe that requiring these broadcast stations and MVPDs to provide fifty or more hours per calendar quarter of programming with video description satisfies this goal.

15. We clarify, as suggested by several commenters, that the broadcast stations and MVPDs may not count toward their 50-hour quarterly requirement programming that they have previously aired with video description, once the rules go into effect. In other words, a broadcast station or MVPD may not count toward its 50-hour quarterly requirement any programming it aired with video description after the effective date of the rules when that same broadcast station or MVPD repeats the same programming later. Broadcast stations and MVPDs may, however, count any programming they air after the effective date in excess of their quarterly requirements, and that they repeat later. In addition, they may count any programming with video description they air before the effective date of the rule, and that they later repeat after the effective date. We also clarify, as suggested by several commenters, that once a broadcast station or MVPD has aired a particular program with video description, all of that broadcast station's or MVPD's subsequent airings of that program should contain video description, unless another use is being made of the SAP channel. We further clarify that non-program minutes, however, such as advertisements and public service announcements, aired during a program need not be described.

16. We also believe that our decision to require that 50 hours per quarter, or roughly 4 hours per week, of programming with video description will avoid any conflicts between competing uses of the SAP channel. Some networks use the SAP channel to provide Spanish audio or other services. Although as some commenters point out there is not a technical solution to allow two uses of the SAP channel simultaneously, as others point out most networks that use the SAP channel to

provide Spanish language audio do so on a limited basis. Those few networks that provide more extensive Spanish language audio are not among the networks that will be affected by our rules. Thus, we believe that our rules will not create conflicts between Spanish language audio and video description for use of the SAP channel.

#### *B. Prime Time vs. Other Types of Programming*

17. We require that the described programming must either be shown during prime time or be children's programming. Prime time programming is the most watched programming, and so programming provided during this time will reach more people than programming provided at any other time. In addition, the several thousand dollars per hour cost to describe programming is a very small portion of the production budget for the typical prime time program. At the same time, programming with video description may provide a benefit not only to children who are visually disabled, but also to those who are learning disabled. Programming with video description has both audio description and visual appeal, and so has the potential to capture the attention of learning disabled children and enhance their information processing skills. Requiring broadcast stations and MVPDs to provide children's or prime time programming with video description thus ensures that the programming reaches the greatest portion of the audience it is intended to benefit the most. Permitting broadcast stations and MVPDs to select between the two provides them flexibility without compromising that goal.

18. In order to help the public identify the broadcast stations and MVPDs that are required to provide programming with video description, and the programming for which they are doing so, we encourage broadcast stations and MVPDs that provide programming with video description to take steps to educate and inform the public about the service. We encourage broadcast stations and MVPDs to promote the service in their programming and on their websites, and provide the relevant information to magazines and newspapers that follow their programming schedules, as some commenters suggest.

19. We note the some commenters suggest that we should not focus on entertainment programming, but rather on the accessibility of text information aired on TV, such as emergency information, the identity of speakers on news and talk shows, and telephone

numbers or other contact information in advertisements. We believe that the accessibility of this type of information is important, and address the accessibility of emergency information in particular below. We believe, however, that a secondary audio program may not be the appropriate vehicle to provide text-based information. However, we do encourage producers of programming with text information to provide that information aurally, by announcing the names of speakers. Advertisers should already have a commercial incentive to provide contact information aurally.

#### V. Effective Date of New Rules

20. We require the broadcast stations in the top 25 DMAs and MVPDs with at least 50,00 subscribers to begin providing programming with video description during the first calendar quarter that is eighteen months after the adoption date of this *R&O*, i.e., April through June 2002. Although we appreciate the desire of many to have programming with video description earlier, we wish to give the affected broadcast stations, MVPDs, and networks the time that may be necessary to make arrangements to describe the programming, and to upgrade their equipment and infrastructure. We believe that giving the affected parties until April 2002 is ample time. We decline to make our effective date coincide with the beginning of the TV season for broadcast networks because our rules also affect nonbroadcast networks, which may or may not use the same schedule to introduce new programs as broadcast networks do. We encourage parties that seek to make the beginning of their new programming seasons coincide with starting date of their providing video description to make the necessary arrangements to do so, within the time frame to meet their first quarterly compliance requirement in April–June 2002.

#### VI. Exemptions

21. We adopt procedures and standards to exempt any broadcast station or MVPD subject to our rules for which compliance would be an “undue burden.” We, therefore, will exempt any affected broadcast station or MVPD that can demonstrate through sufficient evidence that compliance would result in an “undue burden,” which means significant difficulty or expense. We will consider the following factors: The nature and cost of providing video description of the programming; the impact on the operation of the broadcast station or MVPD; the financial resources of the broadcast station or MVPD; the

type of operations of the broadcast station or MVPD; any other factors the petitioner deems relevant; and any available alternatives to video description. Given the limited nature of our initial video description rules, we decline to exempt, however, any particular categories of programming or class of programming providers.

#### VII. Enforcement

22. We adopt enforcement procedures as follows. A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate a complainant's disability. A complaint shall include the name and address of the complainant. The complaint shall include the name of the broadcast station or MVPD against whom the complaint is alleged. A complaint against a broadcast station should include the name and address of the station, and its call letters and network affiliation. A complaint against an MVPD should include the name and address of the MVPD, and the name of the network that provides the programming that is the subject of the complaint. Complaints should include a statement of facts sufficient to show that the broadcast station or MVPD has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's disability). Complaints should be sent to the Commission's Consumer Information Bureau. That bureau will forward formal complaints to the Commission's Enforcement Bureau, and we delegate authority to the Enforcement Bureau to act on and resolve any complaints in a manner consistent with this *R&O*.

23. Complaints satisfying the requirements described will be promptly forwarded by Commission staff to the broadcast station or MVPD involved, which shall be called on to answer the complaint within a specified time, generally within 30 days. To ensure fair and meaningful enforcement of our video description requirements, we will authorize the staff to either shorten or lengthen the time required for responding to complaints in

particular cases. For example, if a complaint alleges that the video description disappeared during a program, we believe that it is appropriate to require the broadcast station or MVPD to respond within 10 days after being notified of the complaint in order to minimize the risk of repeat or recurring problems. If, on the other hand, a complaint alleges that a broadcast station or MVPD has not met its quarterly requirements, it may not be appropriate to require the broadcast station or MVPD to respond until the end of the quarter that is the subject of the complaint. However, recurring complaints or a pattern of such complaints against a particular broadcast station or MVPD may warrant a more immediate response to ensure that quarterly requirements are being addressed by the broadcast station or MVPD in manner consistent with their intended purposes. Commission staff will manage our complaint processes to reflect these and other case specific differences. The burden of proof of compliance in response to a complaint is on the broadcast station or MVPD, and they must maintain records sufficient to show their compliance with our rules.

24. Commission staff will review all relevant information provided by the complainant and defendant broadcast station or MVPD and may request additional information from either or both parties when needed for a full resolution of the complaint. Certifications of compliance from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, may be relied on by broadcast stations and MVPDs to defend against claims of noncompliance. As a general matter, distributors will not be held responsible for situations where a program source falsely certifies that programming delivered to the distributor meets our video description requirements and the distributor did not know and could not have reasonably ascertained that the certification was false. However, we expect broadcast stations and MVPDs to establish appropriate policies and procedures to safeguard against such false certifications. Commission staff will scrutinize complaints to ensure that broadcast stations and MVPDs vigilantly adhere to our video description requirements. If we determine that a violation has occurred, we will use our considerable discretion under the Act to tailor sanctions and remedies to the individual circumstances of a particular violation. For example, in egregious

cases or cases demonstrating a pattern or practice of noncompliance, sanctions may include a requirement that the video programming distributor deliver video programming containing video description in excess of its requirements.

### VIII. Emergency Information

25. We require any broadcast station or MVPD that provides local emergency information to make the critical details of that information accessible to persons with visual disabilities. Our rule applies to all broadcast stations and MVPDs that provide emergency information, as opposed to just those in the largest TV markets or with the largest number of subscribers. We believe this is appropriate both because of the importance of emergency information and because it does not involve the kinds of technical issues involved in using a SAP channel. We envision that affected broadcast stations and MVPDs will aurally describe the emergency information in the main audio as part of their ordinary operations. This would be similar to providing "open" video description. We define emergency information to be that which is intended to protect life, health, safety, and property, *i.e.*, critical details about an emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather. These examples are intended to provide guidance as to what is covered by the rule and are not intended to be an exhaustive list. We do not believe an exhaustive list of examples is necessary to convey what is covered by the rule. Our definition of emergency information will include the provision of critical details in an accessible manner. Critical details could include, among other things, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

26. The rule will require broadcast stations and MVPDs that provide local emergency information to make that information accessible to viewers who

are blind or have visual disabilities in the affected local area through aural presentation whenever such information is provided during regularly scheduled newscasts, unscheduled newscasts that preempt regularly scheduled programming or during continuing coverage of a situation. As a result of our rule, persons with visual disabilities will have access to the same critical information to which other viewers have access. Under this rule, broadcast stations and MVPDs are not required to provide in an accessible format all of the information about an emergency situation that they are providing to viewers visually, only the visual information intended to further the protection of life, health, safety, and property. In determining whether particular details need to be made accessible, we will permit programmers to rely on their own good faith judgments.

27. We believe that our requirement that broadcast stations and MVPDs make the critical details of emergency information available during regularly scheduled newscasts and newscasts that are sufficiently urgent to interrupt regular programming will generally ensure that the critical details of emergency information will be accessible to persons with visual disabilities. This is because we expect that broadcast stations and MVPDs will provide emergency information of an extremely urgent nature by interrupting their regularly scheduled programming with a newsbreak, and we require them to make the critical details of this information accessible. To the extent, however, that a broadcast station or MVPD does not interrupt its regular programming to provide emergency information but rather does so through another manner, such as a "crawl" or "scroll," during that programming, we require them to accompany that information with an aural tone, as referenced in the Notice of Proposed Rule Making ("NPRM"), 64 FR 67236 (December 1, 1999).

28. The new rules regarding emergency information will be effective upon approval by the Office of Management and Budget. We adopt an earlier effective date for this rule because of the importance of emergency information, and because there should be little if any equipment and infrastructure costs associated with compliance.

### IX. Jurisdiction

29. We conclude that we have the authority to adopt video description rules. Section 1 of the Act (codified as 47 U.S.C. 151) established the

Commission "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, *to all the people of the United States* \* \* \* a rapid, efficient, Nationwide, and world-wide wire and radio communication service. \* \* \*" (emphasis added). Section 1 also established the Commission "for the purpose of promoting safety of life and property through the use of wire and radio communication." Section 2(a) of the Act (codified as 47 U.S.C. 152(a)) states that "[t]he provisions of this act shall apply to all interstate and foreign communication by wire or radio" and "all persons engaged within the United States in such communication." Section 4(i) (codified as 47 U.S.C. 154(i)) states that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions" and section 303(r) (codified as 47 U.S.C. 303(r)) states that "the Commission from time to time, as public convenience, interest, or necessity requires shall \* \* \* [m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. \* \* \*"

30. Congress has thus authorized the Commission to make available to all Americans a radio and wire communication service, and to promote safety and life through such service, and to make such regulations to carry out that mandate, that are consistent with the public interest and not inconsistent with other provisions of the Act or other law. In other words, as the Commission has previously explained, "[t]he courts have consistently held that the Commission has broad discretion so long as its actions further the legislative purposes for which the Commission was created and are not contrary to the basic statutory scheme." Thus, in considering the Commission's power to create the universal service fund (for which at the time there was no explicit statutory authority), the U.S. Court of Appeals for the D.C. Circuit relied, solely, on sections 1 and 4(i) of the statute, holding: "As the Universal Service Fund was proposed in order to further the objective of making communication service available to all Americans at reasonable charges, the proposal was within the Commission's statutory authority."

31. We disagree with those parties that contend that video description rules would be inconsistent with other provisions in the Act or other law.

Specifically, some parties contend that video description rules are inconsistent with sections 624 and 713 of the Act, and the First Amendment. Others suggest that the rules interfere with the rights of copyright holders. We address each of these.

32. *Section 713.* Some commenters contend that section 713(f) of the Act, codified as 47 U.S.C. 613(f), only authorizes the Commission to conduct an inquiry, and thus forecloses a rulemaking, on video description. Section 713(f) of the Act states, in its entirety:

Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess the appropriate methods and schedule for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.

Section 713(f) is silent with respect to—and thus by itself neither authorizes nor precludes—a rulemaking. In other words, section 713(f) does not change the purpose for which the Commission was created, as expressed in section 1 of the Act, nor does it derogate the general rulemaking powers the Commission has, as expressed in sections 4(i) and 303(r) of the Act.

33. We recognize, as some commenters point out, that the legislative history to section 713 indicates that Congress considered, but did not enact, language explicitly referencing a rulemaking proceeding. The Conference Report indicates that the House amendment to the Senate bill contained language explicitly referencing a rulemaking proceeding: “Following the completion of this inquiry the Commission may adopt regulations it deems necessary to promote the accessibility of video programming to persons with visual impairments.” The conferees agreed, however, to remove such language: “The agreement deletes the House provision referencing a Commission rulemaking with respect to video description.” While this history indicates that section 713 should not be construed to authorize a Commission rulemaking, the history does not indicate that section 713 should be construed to prohibit such a rulemaking, given our otherwise broad powers to make rules, as expressed in

sections 4(i) and 303(r) of the Act. Had Congress intended to limit our general authority, it could have expressly done so, as it has elsewhere in the Act.

34. *Section 624(f).* Some commenters also contend that, absent express authority to conduct a rulemaking on video description elsewhere in the Act, section 624(f) of the Act precludes the Commission from adopting video description rules for cable operators. Section 624(f) states that “[a]ny Federal agency \* \* \* may not impose requirements regarding the provision or content of cable services, except as expressly provided in [Title VI].” The U.S. Court of Appeals for the D.C. Circuit has interpreted this section to forbid “rules requiring cable companies to carry particular programming.” The video description rules we adopt today are not content-based, and as such, do not require cable companies (or any other distributor of video programming) to carry particular programming. Rather, our rules simply require that, if a distributor chooses to carry the programming of the largest networks, it must provide a small amount of programming with video description.

35. *First Amendment.* Some commenters argue that requiring video description is inconsistent with the First Amendment, because it compels speech, or otherwise is content-based regulation. Other commenters, however, contend that our rules are content-neutral regulations, similar to time, place, and manner regulations, and under the applicable test, are consistent with the First Amendment. The Supreme Court has held that “[t]he principal inquiry in determining content neutrality, in speech cases generally and in time, place or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to free expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” The purpose of our video description rules is to enhance the accessibility of video programming to persons with disabilities, and is not related to content.

36. The fact that our rules will require, as opposed to restrict, speech does not change the analysis. As a number of commenters explain, a mandate to provide video description does not require a programmer to express anything other than what the programmer has already chosen to express in the visual elements of the program. Our rules simply require a

programmer to express what it has already chosen to express in an alternative format to enhance the accessibility of the message. As such, our rules are comparable to a requirement to translate one's speech into another language in other contexts. A requirement to provide programming with video description is most similar to our existing requirements to provide programming with closed captioning, which, as several commenters point out, has not been challenged on First Amendment grounds. Indeed, the U.S. Court of Appeals for the D.C. Circuit concluded nearly twenty years ago that any requirement to provide programming with closed captioning would not violate the First Amendment.

37. Given that our video description rules are content-neutral regulations, the applicable test for reviewing their constitutionality is whether the regulations promote an important government purpose, and whether they do not burden substantially more speech than necessary. As indicated, our purpose in adopting our rules is to enhance the accessibility of television programming to persons with visual disabilities. As we observed in the *NPRM*, television programming shapes American culture and public opinion in myriad ways, because it is our principal source of news and information, and provides hours of entertainment weekly. Millions of Americans have visual disabilities and have difficulty following the visual elements in television programming, which can be overcome through video description. We believe this is an important government purposes in the context of the First Amendment, and believe that other legislation designed to enhance the accessibility of communications to persons with disabilities supports our conclusion.

38. We also believe that video description will not burden any more speech than necessary. As described, video description is in effect the translation of the visual elements of programming into another language to provide functional equivalency for the blind. Our rules will require only a limited amount of programming to contain video description. To the extent the video description is distracting to viewers who do not wish to hear it, they can simply listen to the main audio instead of the SAP channel.

## X. Conclusion

39. Today we adopt rules to enhance the accessibility of the important medium of television to persons with visual disabilities. We do not impose an undue burden on the programming

production and distribution industries. Our rules will require only the largest broadcast stations and MVPDs—which provide television programming to the majority of the public—to provide a limited amount of programming with video description. These broadcast stations and MVPDs will provide programming with video description on the largest networks they carry—which provide the most watched television programming. Our rules will thus create a benefit to the greatest number of persons with visual disabilities but at the same time impose a cost on the least number of broadcast stations and MVPDs. As the industry and the public gain greater experience with video description, we hope that more broadcast stations and MVPDs will provide video description, and those that do so will provide more hours of programming with video description.

#### XI. Administrative Matters

40. This document is available to individuals with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or by sending an email to [access@fcc.gov](mailto:access@fcc.gov).

41. *Final Paperwork Reduction Act Analysis*. This *R&O* contains information collection requirements that the Commission is submitting to the Office of Management and Budget requesting clearance under the Paperwork Reduction Act of 1995.

42. *Final Regulatory Flexibility Certification*. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*

#### XII. Ordering Clauses

43. Accordingly, pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, 310, and 713 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613, part 79 of the Commission's rules are amended as set forth.

44. The rules set forth that revise § 79.2 of the Commission's rules, 47 CFR 79.2, shall become effective upon approval from the Office of Management and Budget, and the rules set forth that add § 79.3 to the Commission's rules, 47 CFR 79.3, shall become effective on April 1, 2002.

45. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *R&O*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

46. This proceeding is terminated.

#### XIII. Final Regulatory Flexibility Act Certification

47. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The *NPRM* published in this proceeding proposed rules to provide video description on video programming in order to ensure the accessibility of video programming to persons with visual impairments.

48. In an abundance of caution, the Commission published an Initial Regulatory Flexibility Analysis (IRFA) in the *NPRM*, even though the Commission was reasonably confident that the proposed rules would not have the requisite "significant economic impact" on a "substantial number of small entities." The IRFA sought written public comment on the proposed rules. No written comments were received on the IRFA, nor were general comments received that raised concerns about the impact of the proposed rules on small entities.

49. The rules adopted in this *R&O* requiring stations to provide video descriptions on video programming will affect at most five small broadcasters, which are affiliates of the top four networks in the top 25 Nielsen Designated Market Areas, in the amount of \$5,000 to \$25,000 each. We recognize that the upper end of the possible economic impact might constitute a significant impact for some small broadcasters, but, as noted, this impact will reach, at most, 10 entities, and we have provided an exemption (upon application) for those small entities for which the cost is burdensome. The pass through of programming will have no significant economic impact on small entities because they are required to pass through the programming with video description only if they already have the technical capability necessary to do so. The Commission believes that the emergency notification requirement will have a negligible effect on small entities as well. In addition, if this requirement should prove burdensome to small entities, they may apply for an exemption.

50. The Commission therefore certifies, pursuant to the RFA, that the rules adopted in the present *R&O* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *R&O*, including a copy of this final certification, in a report to be

sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including a copy of this final certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, a copy of the *R&O* and this final certification will be published in the *Federal Register*. *See* 5 U.S.C. 605(b).

#### List of Subjects in 47 CFR Part 79

Cable television.

Federal Communications Commission.

Magalie Roman Salas,  
Secretary.

#### Rules

Part 79 of Title 47 of the U.S. Code of Federal Regulations is amended by revising it to read as follows:

#### PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

1. The title of part 79 is revised to read as set forth above:

2. The authority citation for part 79 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613.

3. Section 79.2 is amended by revising paragraphs (a)(1), (b)(1), and (b)(3) to read as follows:

#### § 79.2 Accessibility of programming providing emergency information.

(a) *Definitions*. (1) For purposes of this section, the definitions in §§ 79.1 and 79.3 apply.

\* \* \* \* \*

(b) Requirements for accessibility of programming providing emergency information.

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, accessible as follows:

(i) Emergency information that is provided in the audio portion of the programming must be made accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in § 79.1 of this part;

(ii) Emergency information that is provided in the video portion of a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to persons with visual disabilities; and

(iii) Emergency information that is provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that

interrupts regular programming, must be accompanied with an aural tone.

\* \* \* \* \*

(3) Video programming distributors must ensure that:

(i) Emergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by means other than closed captioning; and

(ii) Emergency information should not block any video description and any video description provided should not block any emergency information provided by means other than video description.

\* \* \* \* \*

4. Part 79 is amended by adding § 79.3 to read as follows:

**§ 79.3 Video description of video programming.**

(a) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Designated Market Areas (DMAs).* Unique, county-based geographic areas designated by Nielsen Media Research, a television audience measurement service, based on television viewership in the counties that make up each DMA.

(2) *Second Audio Program (SAP) channel.* A channel containing the frequency-modulated second audio program subcarrier, as defined in, and subject to, the Commission's OET Bulletin No. 60, Revision A, "Multichannel Television Sound Transmission and Processing Requirements for the BTSC System," February 1986.

(3) *Video description.* The insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

(4) *Video programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.

(5) *Video programming distributor.* Any television broadcast station licensed by the Commission and any multichannel video programming distributor (MVPD), and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.

(b) The following video programming distributors must provide programming with video description as follows:

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), as of September 30, 2000, and

that are licensed to a community located in the top 25 DMAs, as determined by Nielsen Media Research, Inc. for the year 2000, must provide 50 hours of video description per calendar quarter, either during prime time or on children's programming;

(2) Television broadcast stations that are affiliated or otherwise associated with any television network, must pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description;

(3) Multichannel video programming distributors (MVPDs) that serve 50,000 or more subscribers, as of September 30, 2000, must provide 50 hours of video description per calendar quarter during prime time or on children's programming, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks, as determined by Nielsen Media Research, Inc., for the time period October 1999 through September 2000; and

(4) Multichannel video programming distributors (MVPDs) of any size:

(i) Must pass through video description on each broadcast station they carry, when the broadcast station provides video description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the video description; and

(ii) Must pass through video description on each nonbroadcast network they carry, when the network provides video description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the video description.

(c) *Responsibility for and determination of compliance.* (1) The Commission will calculate compliance on a per channel, calendar quarter basis, beginning with the calendar quarter April 1 through June 30, 2002.

(2) Programming with video description will count toward a broadcaster's or MVPD's minimum requirement for a particular quarter only if that programming has not previously been counted by that broadcaster or MVPD towards its minimum requirement for any quarter.

(3) Once an entity has aired a particular program with video description, it is required to include video description with all subsequent airings of that program, unless the entity uses the SAP channel in connection

with the program for a purpose other than providing video description.

(4) In evaluating whether a video programming distributor has complied with the requirement to provide video programming with video description, the Commission will consider showings that any lack of video description was de minimis and reasonable under the circumstances.

(d) Procedures for exemptions based on undue burden.

(1) A video programming distributor may petition the Commission for a full or partial exemption from the video description requirements of this section, which the Commission may grant upon a finding that the requirements will result in an undue burden.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with video description would cause an undue burden. The term "undue burden" means significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for video description impose an undue burden:

(i) The nature and cost of providing video description of the programming;

(ii) The impact on the operation of the video programming distributor;

(iii) The financial resources of the video programming distributor; and

(iv) The type of operations of the video programming distributor.

(3) In addition to these factors, the petitioner must describe any other factors it deems relevant to the Commission's final determination and any available alternative that might constitute a reasonable substitute for the video description requirements. The Commission will evaluate undue burden with regard to the individual outlet.

(4) The petitioner must file an original and two (2) copies of a petition requesting an exemption based on the undue burden standard, and all subsequent pleadings, in accordance with § 0.401(a) of this chapter.

(5) The Commission will place the petition on public notice.

(6) Any interested person may file comments or oppositions to the petition within 30 days of the public notice of the petition. Within 20 days of the close of the comment period, the petitioner may reply to any comments or oppositions filed.

(7) Persons that file comments or oppositions to the petition must serve the petitioner with copies of those comments or oppositions and must

include a certification that the petitioner was served with a copy. Parties filing replies to comments or oppositions must serve the commenting or opposing party with copies of such replies and shall include a certification that the party was served with a copy.

(8) Upon a showing of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) Persons filing petitions and responsive pleadings must include a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

(10) The Commission may deny or approve, in whole or in part, a petition for an undue burden exemption from the video description requirements.

(11) During the pendency of an undue burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the video description requirements.

(e) *Complaint procedures.* (1) A complainant may file a complaint concerning an alleged violation of the video description requirements of this section by transmitting it to the Consumer Information Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. Complaints should be addressed to: Consumer Information Bureau, 445 12th Street, SW, Washington, DC 20554. A complaint must include:

(i) The name and address of the complainant;

(ii) The name and address of the broadcast station against whom the complaint is alleged and its call letters and network affiliation, or the name and address of the MVPD against whom the complaint is alleged and the name of the network that provides the programming that is the subject of the complaint;

(iii) A statement of facts sufficient to show that the video programming distributor has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation;

(iv) The specific relief or satisfaction sought by the complainant; and

(v) The complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's disability).

(2) The Commission will promptly forward complaints satisfying the requirements to the video programming distributor involved. The video programming distributor must respond to the complaint within a specified time, generally within 30 days. The Commission may authorize Commission staff to either shorten or lengthen the time required for responding to complaints in particular cases.

(3) The Commission will review all relevant information provided by the complainant and the video programming distributor and will request additional information from either or both parties when needed for a full resolution of the complaint.

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance. The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets our video description requirements if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the video description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing video description in excess of its requirements.

(f) Private rights of action are prohibited. Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

[FR Doc. 00-23154 Filed 9-8-00; 8:45 am]

BILLING CODE 6712-01-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1845 and 1852

#### Property Reporting Requirements

**AGENCY:** National Aeronautics and Space Administration (NASA)

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends the NASA FAR Supplement (NFS) to

comply with OMB Bulletin 97-01 and makes other changes to NASA's property reporting requirements. Specific changes include: Additional instructions on how to adjust previously reported values; a new definition of Agency Peculiar Property to exclude completed end items destined for permanent operation in space; and a new definition of Work in Process to include completed end items destined for permanent operation in space which otherwise meet the definition of Agency Peculiar Property.

**DATES:** *Effective Date:* September 11, 2000.

*Comment Date:* Comments should be submitted to NASA at the address below on or before November 13, 2000.

**ADDRESSES:** Comments should be sent to James H. Dolvin, NASA Headquarters, Code HK, Washington, DC 20546, (202) 358-1279, [jdolvin1@mail.hq.nasa.gov](mailto:jdolvin1@mail.hq.nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** James H. Dolvin, (202) 358-1279.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

OMB Bulletin 97-01, Form and Content of Agency Financial Statements, prescribes financial accounting and reporting requirements for Federal agencies. Included are accounting standards which apply to property, plant and equipment. Comments have been received from contractors regarding NASA's initial implementation of the standards through the NASA Form 1018 reporting format. In addition to changes being made to respond to contractors' concerns, changes are needed in NASA's reporting requirements to ensure compliance with the accounting standards and accurate and timely financial statements.

##### B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because less than three per cent of NASA contracts with small businesses have property reporting requirements.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, applies to this proposed rule because it contains information collection requirements. Approval for the additional requirements has been obtained under OMB Control No. 2700-0017, approving an increase in burden hours from 5,700 to 8,144.

**D. Determination to Issue an Interim Rule**

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. The basis for this determination is that the new definitions and reporting requirements in this interim rule are needed to comply with OMB Bulletin 97-01, and that it is necessary to issue these changes immediately so they can be incorporated into NASA contractor property reports for the year ending September 30, 2000. Public comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Part 1845 and 1852**

Government Procurement.

**Tom Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1845 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1845 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

**PART 1845—GOVERNMENT PROPERTY**

2. Subpart 1845.71 is revised to read as follows:

**Table of Contents****Subpart 1845.71—Forms Preparation**

Sec.

1845.7101 Instructions for preparing NASA Form 1018.

1845.7101-1 Property classification.

1845.7101-2 Transfers of property.

1845.7101-3 Unit acquisition cost.

1845.7101-4 Types of deletions from contractor property records.

1845.7101-5 Contractor's privileged financial and business information.

**Subpart 1845.71—Forms Preparation****1845.7101 Instructions for preparing NASA Form 1018.**

NASA must account for and report assets in accordance with 31 U.S.C. 3512 and 31 U.S.C. 3515, Federal Accounting Standards, and Office of Management and Budget (OMB) instructions. Since contractors maintain NASA's official records for its assets in their possession, NASA must obtain annual data from those records to meet these requirements. Changes in Federal Accounting Standards and OMB reporting requirements may occur from year to year, requiring contractor submission of supplemental information with the NASA Form (NF) 1018.

Contractors shall retain documents which support the data reported on NF 1018 in accordance with FAR subpart 4.7, Contractor Records Retention. Classifications of property, related costs to be reported, and other reporting requirements are discussed in this subpart. NASA Form 1018 (see 1853.3) provides critical information for NASA financial statements and property management. Accuracy and timeliness of the report are very important. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant Center Industrial Property Officer (IPO) to discuss corrective action. IPO's shall work with Center finance personnel to determine appropriate corrective action and provide guidance to contractors.

**1845.7101-1 Property classification.**

(a) *General.* Contractors shall report costs in the classifications on NF 1018, as described in this section.

(b) *Land.* Includes costs of land and improvements to land. Contractors shall report land with a unit acquisition cost of \$100,000 or more.

(c) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Contractors shall report land with a unit acquisition cost of \$100,000 or more. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(d) *Other structures and facilities.* Includes costs of acquisitions and improvements of structures and facilities other than buildings; for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements such as sidewalks, parking areas, and fences. Contractors shall report other structures and facilities with a unit acquisition cost of \$100,000 or more and a useful life of two years or more.

(e) *Leasehold improvements.* Includes NASA-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee

or the cost is charged to a NASA contract. Contractors shall report leasehold improvements with a unit acquisition cost of \$100,000 or more and a useful life of two years or more.

(f) *Construction in progress.* Includes costs of work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title, regardless of value.

(g) *Equipment.* Includes costs of commercially available personal property capable of stand-alone use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, software, test equipment, including their accessory or auxiliary items). Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more; and

(2) All items under \$100,000, regardless of useful life.

(h) *Special tooling.* Includes costs of equipment and manufacturing aids (and their components and replacements) of such a specialized nature that, without substantial modification or alteration, their use is limited to development or production of particular supplies or parts, or performance of particular services. Examples include jigs, dies, fixtures, molds, patterns, taps and gauges. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more; and

(2) All items under \$100,000, regardless of useful life.

(i) *Special test equipment.* Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more; and

(2) All items under \$100,000, regardless of useful life.

(j) *Material.* Includes costs of NASA-owned property held in inventory that may become a part of an end item or be expended in performing a contract. Examples include raw and processed material, parts, assemblies, small tools and supplies. Material that is part of work-in-process is not included. Contractors shall report the amount for all Materials in inventory, regardless of unit acquisition cost.

(k) *Agency-peculiar property.* Includes costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include research aircraft, reusable space vehicles, ground support equipment, prototypes, and mock-ups. The amount of property, title to which vests in NASA as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property. Contractors shall separately report:

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more; and

(2) All items under \$100,000, regardless of useful life. Completed end items which otherwise meet the definition of Agency-Peculiar Property, but are destined for permanent operation in space, such as satellites and space probes, shall be reported as Contract Work in Process.

(l) *Contract work-in-process.* Includes costs of all work-in-process regardless of value; excludes costs of completed items reported in other categories. Includes completed end items of property which otherwise meet the definition of Agency-Peculiar Property, but are destined for permanent operation in space, such as satellites and space probes.

#### **1845.7101-2 Transfers of property.**

A transfer is a change in accountability between and among prime contracts, NASA centers, and other Government agencies (*e.g.*, between contracts of the same NASA Center, contracts of different NASA Centers, a contract of one NASA Center to another, a NASA Center to a contract of another NASA Center, and a contract to another Government agency or its contract). To enable NASA to properly control and account for transfers, they shall be adequately documented. Therefore, procurement, property, and financial organizations at NASA Centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. The procedures described in this section shall be followed to provide an administrative and audit trail, even if property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be accounted for and reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has

been received. Repairables provided under fixed price repair contracts that include the clause at 1852.245-72, Liability for Government Property Furnished for Repair or Other Services, remain accountable to the cognizant NASA Center and are not reportable on NF 1018; repairables provided under a cost-reimbursement contract, however, are accountable to the contractor and reportable on NF 1018. All materials provided to conduct repairs are reportable, regardless of contract type.

(a) *Approval and notification.* The contractor must obtain approval of the contracting officer or designee for transfers of property before shipment. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded (including Federal Supply Classification group (FSC) codes for equipment), unit acquisition costs (as defined in 1845.7101-3, Unit Acquisition Cost), original acquisition dates for items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more, and any other appropriate identifying or descriptive data. Where the DD Form 250, Material Inspection and Receiving Report, is used, the FSC code will be part of the national stock number (NSN) entered in Block 16 or, if the NSN is not provided, the FSC alone shall be shown in Block 16. The original acquisition date shall be shown in Block 23, by item. Other formats, such as the DD Form 1149, Requisition and Invoice/Shipping Document, should be clearly annotated with the required information. Unit acquisition costs shall be obtained from records maintained pursuant to FAR Part 45 and this Part 1845, or, for uncompleted items where property records have not yet been established, from such other record systems as are appropriate such as manufacturing or engineering records used for work control and billing purposes. Shipping contractors shall furnish a copy of the shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly notify the financial management office of the NASA Center responsible for their respective contracts when accountability for NASA property is transferred to, or received from, other contracts, contractors, NASA Centers, or Government agencies. Copies of shipping or receiving documents will suffice as notification in most instances.

(b) *Reclassification.* If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example,

when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (*e.g.*, omission of property classification, FSC, unit acquisition cost, acquisition date, etc.) they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505-2.

#### **1845.7101-3 Unit acquisition cost**

(a) The unit acquisition cost shall include all costs incurred to bring the property to a form and location suitable for its intended use. For example, the cost shall include the following, as appropriate:

(1) Amounts paid to vendors or other contractors.

(2) Transportation charges to the point of initial use.

(3) Handling and storage charges.

(4) Labor and other direct or indirect production costs (for assets produced or constructed).

(5) Engineering, architectural, and other outside services for designs, plans, specifications, and surveys.

(6) Acquisition and preparation costs of buildings and other facilities.

(7) An appropriate share of the cost of the equipment and facilities used in construction work.

(8) Fixed equipment and related installation costs required for activities in a building or facility.

(9) Direct costs of inspection, supervision, and administration of construction contracts and construction work.

(10) Legal and recording fees and damage claims.

(11) Fair values of facilities and equipment donated to the Government.

(12) Material amounts of interest costs paid.

(b) Acquisition cost shall include, where appropriate, for contractor acquired Special Test Equipment, Special Tooling, Agency-Peculiar Property and Contract Work-In-Process, related fees, or a *pro rata* portion of fees, paid by NASA to the contractor. Situations where inclusion of fees in the acquisition cost would be appropriate

are those in which the contractor designs, develops, fabricates or purchases property for NASA and part of the fees paid to the contractor by NASA are related to that effort.

(c) The use of weighted average methodologies is acceptable for valuation of Material.

(d) Contractors shall report unit acquisition costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and include all direct and indirect costs of fabrication.

(e) The contractor shall redetermine unit acquisition costs of items returned for modification or rehabilitation. If an item's original acquisition cost is \$100,000 or more, only modifications that improve that item's capacity or extend its useful life two years or more *and* that cost \$100,000 or more shall be added to the original acquisition cost reported on the NF 1018. The costs of any other modifications will be considered to be expensed. If an item's original unit acquisition cost is less than \$100,000, but a single subsequent modification costs \$100,000 or more, that modification *only* will be reported as an item \$100,000 or more on subsequent NF 1018s. The original acquisition cost of the item will continue to be included in the under \$100,000 total. The quantity for the modified item will remain "1" and be reported with the original acquisition cost of the item. If an item's acquisition cost is reduced by removal of components so that its remaining acquisition cost is under \$100,000, it shall be reported as under \$100,000.

(f) The computation of work in process shall include all direct and indirect costs of fabrication, including associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials issued from inventory. Work in Process shall include the unit acquisition cost of completed end items of property which otherwise meet the definition of Agency-Peculiar Property, but which are destined for permanent operation in

space, such as satellites and space probes.

#### **1845.7101-4 Types of deletions from contractor property records.**

Contractors shall report the types of deletions from contract property records as described in this section.

(a) *Lost, damaged or destroyed.* Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(b) *Transferred in place.* Deletion amounts that result from transfer of property to a follow-on contract with the same contractor.

(c) *Transferred to NASA Center accountability.* Deletion amounts that result from transfer of accountability to the NASA Center responsible for the contract, whether or not items are physically moved.

(d) *Transferred to another NASA Center.* Deletion amounts that result from transfer of accountability to a NASA Center other than the one responsible for the contract, whether or not items are physically moved.

(e) *Transferred to another Government agency.* Deletion amounts that result from transfer of property to another Government agency.

(f) *Purchased at cost/returned for credit.* Deletion amounts that result from contractor purchase or retention of contractor acquired property as provided in FAR 45.605-1, or from contractor returns to suppliers under FAR 45.605-2.

(g) *Disposed of through plant clearance process.* Deletions other than transfers within the Federal Government, *e.g.*, donations to eligible recipients, sold at less than cost, or abandoned/directed destruction.

(h) *Other.* Types of deletion other than those reported in paragraphs (a) through (g) of this section.

#### **1845.7101-5 Contractor's privileged financial and business information.**

If a transfer of property between contractors involves disclosing costs of a proprietary nature, the contractor shall furnish unit acquisition costs only on copies of shipping documents sent to the shipping and receiving NASA Centers. Transfer of the property to the receiving contractor shall be on a no-cost basis.

### **PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Revise section 1852.245-73 to read as follows:

#### **1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors.**

As prescribed in 1845.106-70(d), insert the following clause:

#### **Financial Reporting of NASA Property in the Custody of Contractors**

September, 2000.

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with the provisions of 1845.505-14, the instructions on the form, subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the Center Deputy Chief Financial Officer, Finance.

(3) Three copies shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports when due. Such reserve shall be withheld until the Contracting Officer has determined that the required reports have been received by NASA. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with (b)(1) through (3) of this clause.

(End of clause)

[FR Doc. 00-23005 Filed 9-8-00; 8:45 am]

BILLING CODE 7510-01-U

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

[Docket No. 000831250-0250-01; 071400E]

RIN 0648-AN74

## Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final harvest guideline.

**SUMMARY:** NMFS announces the annual harvest guideline for Pacific mackerel in the exclusive economic zone off the Pacific coast. The Coastal Pelagic Species Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on a formula in the FMP. The intended effect of this action is to establish allowable harvest levels for Pacific mackerel off the Pacific coast.

**DATES:** Effective September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** James J. Morgan, Southwest Region, NMFS, 562-980-4036.

**SUPPLEMENTARY INFORMATION:** The FMP, which was implemented by a final rule published in the *Federal Register* on December 15, 1999 (64 FR 69888), divides managed species into two categories—actively managed and monitored. Harvest guidelines of actively managed species (i.e., Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Current biomass estimates are not calculated for species that are only monitored (i.e., jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is presented by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team) to the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel). At that time, the biomass, the harvest guideline, and the status of the fisheries are reviewed. Following review by the Council's Scientific and Statistical committee and after hearing public

comments, the Council makes a recommendation to NMFS, which publishes the annual harvest guideline in the *Federal Register* as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season began on July 1, 2000, and ends on June 30, 2001, or until the harvest guideline is caught and the fishery is closed. All landings of Pacific mackerel from July 1, 2000, to the effective date of this rule will be counted toward the total harvest guideline of 20,740 (metric tons) mt.

On June 8, 2000, consistent with the procedures of the FMP, the biomass report and harvest guideline for Pacific mackerel were reviewed at a public meeting of the Team and a public meeting of the Subpanel at the offices of the California Department of Fish and Game in Long Beach, California. A modified virtual population analysis stock assessment model is used to estimate biomass of Pacific mackerel. The model employs both fishery-dependent and fishery-independent indices to estimate abundance. Using this model, the biomass was calculated through the end of 1999. The biomass was then estimated for July 1, 2000, based on (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2000, (2) modeled estimates of fishing mortality during 1999, (3) assumptions for natural and fishing mortality through the first half of 2000, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2000, is 116,967 metric tons (mt) and the harvest guideline is 20,740 mt. At its meeting on June 30, 2000, in Portland, OR, the Council heard reports from the Team, the Scientific and Statistical Committee, and the Subpanel. No public comments were received. The Council recommended publishing the harvest guideline as presented.

The biomass estimated for the period July 1, 1999, through June 30, 2000, was 239,286 mt; therefore, the biomass for the 2000/2001 fishery of 116,967 mt is a significant reduction. During calendar year 1998, Mexico harvested 50,750 mt of Pacific mackerel and the U.S. harvested 20,073 mt. This high fishing mortality is one reason for the decline in biomass. There also has been a general decline in age-zero fish since 1991. Fish were scarce in the area of the fishery off the U.S. coast and off Mexico during 1999.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. The biomass of Pacific mackerel. For 2000, this estimate is 116,967 mt.
2. The cutoff. This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt.
3. The portion the Pacific mackerel biomass that is in U.S. waters. This estimate is 70 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.
4. The harvest fraction. This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent.

Based on the estimated biomass of 116,967 mt and the formula in the FMP, a harvest guideline of 20,740 mt was calculated for the fishery beginning on July 1, 2000. This harvest guideline is available for harvest for the fishing season July 1, 2000, through June 30, 2001.

## Classification

This action is authorized by 50 CFR 660.509 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary. Providing prior notice and an opportunity for public comment would serve no useful purpose because establishing the harvest guideline is a nondiscretionary act determined by following procedures and formulas set in the FMP.

Because this rule merely announces the result of harvest guideline calculations and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00-23253 Filed 9-8-00; 8:45 am]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 65, No. 176

Monday, September 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV00-932-3 PR]

#### Olives Grown in California; Modification to Handler Membership on the California Olive Committee

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would modify the handler membership on the California Olive Committee (Committee). The Committee locally administers the California olive marketing order (order) which regulates the handling of olives grown in California. The Committee is composed of 16 industry members of which 8 are producers and 8 are handlers. Current handler representation on the Committee provides that the two handlers who handled the largest and second largest total volume of olives during the crop year in which nominations are made and in the preceding crop year shall be represented by three members and alternate members each, and that the remaining handler shall be represented by two members and alternate members. Recently, one of the handlers indicated that it is exiting the business, and no longer desired to serve on the Committee. This rule would reallocate handler membership and enable the Committee to operate at full strength.

**DATES:** Comments must be received by October 11, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket

number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the

order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would modify the order's administrative rules and regulations regarding the structure of handler membership on the Committee. The change in structure was unanimously recommended by the Committee.

Section 932.25 of the order provides for the establishment of the Committee to locally administer the terms and provisions of the order. The Committee is composed of 16 industry members, each with an alternate. Of the 16 industry members, 8 are producers and 8 are handlers. This section also specifies how the handler membership on the Committee is allocated. Authority is provided for the Committee, with the approval of the Secretary, to change the allocation of both producer and handler members as may be necessary to assure equitable representation.

Based on this authority, § 932.159 of the administrative rules and regulations currently provides that the two handlers who handled the largest and second largest total volume of olives during the crop year in which nominations are made and in the preceding crop year shall be represented by three members and alternate members each, and the remaining handler shall be represented by two members and alternate members. This reallocation was implemented in January of 1999 (64 FR 4286) with an interim final rule. Comments were invited until March 29, 1999. The interim final rule was adopted without change in a final rule in April of 1999 (64 FR 23009).

The structure of the olive industry has changed over the years and the number of handlers, both cooperative and independent (or handlers not affiliated with a cooperative marketing organization), has decreased. At one time, there were a number of cooperative marketing organizations and independent handlers and the

Committee's structure was designed so that four of the eight handler seats were held by cooperatives and four were held by independents. This representation was also weighted by the volume of olives handled so that if one group, either cooperatives or independents, handled 65 percent or more of the total industry's volume handled during the nominating crop year and the preceding crop year, that group would have five seats on the Committee and the other group would have three seats.

In 1993, handler membership on the Committee was reallocated to reflect changes within the handler segment of the industry. The number of industry handlers declined to only five handlers—one cooperative and four independents. At that time, § 932.159 of the order's rules and regulations was modified to reapportion handler membership to provide cooperative handlers with two seats on the Committee and independent handlers with six seats.

When the number of handlers declined to one cooperative and two independent handlers, and restrictions on handler affiliation resulted in two vacant handler positions on the Committee, changes on handler allocation were implemented to allow those positions to be filled and to enable the Committee to operate at full strength. Section 932.159 was revised (64 FR 4286, January 28, 1999; 64 FR 23009, April 29, 1999) to eliminate the distinction between cooperative marketing organizations and independent handlers and § 932.160 on handler affiliation was removed. The eight handler seats on the Committee were reallocated based on the total volume of olives handled during the crop year in which nominations are made and the preceding crop year, with the handlers handling the first and second largest volume being represented by three members each, and the remaining handler being represented by two members.

Recently, one handler in the industry indicated that it is exiting the business, will no longer be handling olives after it markets its old crop inventory, and, that it no longer desired to serve on the Committee. The Committee met and unanimously recommended modifying the rules and regulations to reallocate handler membership equally between the two other handlers. Each handler would be represented by four handlers and four alternates. This rule is intended to modify the Committee's handler membership to enable the Committee to operate at full strength; *i.e.*, with all eight handler and producer positions filled.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 3 handlers of California olives who are subject to regulation under the marketing order and approximately 1,200 olive producers in the regulated area. One of these handlers informed the Committee that it plans to exist the industry, and will no longer be handling olives after it markets its old crop inventory. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. None of the olive handlers may be classified as small entities.

A review of historical and preliminary information pertaining to the 1999–00 crop year (August 1 through July 31) indicates that total grower revenue for the 1999 crop will be approximately \$39,500,000, and the average grower revenue will be approximately \$33,000. Thus, it can be concluded that the majority of producers of California olives may be classified as small entities.

This rule would modify the rules and regulations of the olive order regarding the structure of handler membership on the Committee. Section 932.25 of the order provides for the establishment of the Committee to locally administer the terms and provisions of the order. The Committee is composed of 16 industry members, each with an alternate. Of the 16 industry members, 8 are producers and 8 are handlers. This section also specifies how the handler membership on the Committee is allocated. Authority is provided for the Committee, with the approval of the Secretary, to change the allocation of both producer and handler members as may be necessary to assure equitable representation.

Section 932.159 of the administrative rules and regulations provides that the

two handlers who handled the largest and second largest total volume of olives during the crop year in which nominations are made and in the preceding crop year shall be represented by three members and alternate members each, and the remaining handler shall be represented by two members and alternate members.

The structure of the olive industry has changed over the years and the number of handlers, both cooperative and independent, has decreased. At one time, there were a number of cooperative marketing organizations and independent handlers and the Committee's structure was designed so that four of the eight handler seats were held by cooperatives and four were held by independents. This representation was also weighted by the volume of olives handled so that if one group, either cooperatives or independents, handled 65 percent or more of the total industry's volume handled during the nominating crop year and the preceding crop year, that group would have five seats on the Committee and the other group would have three seats.

In 1993, handler membership on the Committee was reallocated to reflect changes within the industry. The number of industry handlers declined to only five handlers—one cooperative and four independents. At that time, § 932.159 of the order's rules and regulations was modified to reapportion handler membership to provide cooperative handlers with two seats on the Committee and independent handlers with six seats.

When the number of handlers declined to one cooperative and two independent handlers, and restrictions on handler affiliation resulted in two vacant handler positions on the Committee, changes on handler allocation were implemented to allow these positions to be filled and to enable the Committee to operate at full strength. Section 932.159 was revised (64 FR 4286, January 28, 1999; 64 FR 23009, April 29, 1999) to eliminate the distinction between cooperative marketing organizations and independent handlers and § 932.160 on handler affiliation was removed. The eight handler seats on the Committee were reallocated based on the total volume of olives handled during the crop year in which nominations are made and the preceding crop year, with the handlers handling the first and second largest volume being represented by three members each, and the remaining handler being represented by two members.

Recently, one of the handlers indicated that it is exiting the business,

will no longer be handling olives after it markets its old crop inventory, and that it no longer desired to serve on the Committee. The Committee unanimously recommended modifying the rules and regulations to reallocate handler membership equally between two handlers with each handler represented by four members and four alternates. This rule is intended to enable the Committee to operate at full strength; *i.e.*, with all eight handler and producer positions filled.

One alternative to this rule discussed at the meeting was to leave the language in § 932.159 unchanged; however, the current language is no longer appropriate. The current language specifies that the two handlers who handled the largest and second largest volume of olives during the crop year in which nominations are made and in the preceding crop year shall be represented by three members and alternate members each, and that the remaining handler shall be represented by two members and two alternate members. Since one of the remaining handlers no longer desires to serve on the Committee, the language concerning the two seats allocated to the third handler is no longer appropriate. Therefore, the Committee recommended that handler membership be reallocated equally between two handlers and that each handler be represented by four members and four alternate members.

This rule would not impose any additional reporting or recordkeeping requirements on either of the two olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the meeting at which the recommendation was made, was a public meeting and all entities, both large and small, were able to express their views on this issue. All of the industry handlers currently represented on the Committee participated in the deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at the following website: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because there are two vacant handler member seats on the Committee. The seats should be filled under the proposed modifications to the administrative rules and regulations. It is important that the Committee operate at full strength. Any written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

#### PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 932.159 is revised to read as follows:

##### § 932.159 Reallocation of handler membership.

Pursuant to § 932.25, handler representation on the Committee is reallocated to provide that the two handlers who handled the largest and second largest total volume of olives during the crop year in which nominations are made and in the preceding crop year shall each be represented by four members and four alternate members.

Dated: September 6, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–23348 Filed 9–8–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000–CE–34–AD]

RIN 2120–AA64

**Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models MS 880B, MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235C, and Rallye 235E Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all SOCATA—Groupe AEROSPATIALE (Socata) Models MS 880B, MS 885, MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235C, and Rallye 235E airplanes. The proposed AD would require you to repetitively inspect, and, if necessary, replace elevator clevis and rudder governor control clevis that are too thin. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in the proposed AD are intended to correct rudder and elevator control clevis that are too thin because of abnormal wear, with consequent failure of the rudder and elevator clevis. Such failure could lead to loss of directional or pitch control.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 11, 2000.

**ADDRESSES:** Send comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–34–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get service information that applies to the proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe

AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894-1160; facsimile: (954) 964-4191. You may read this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; facsimile: (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

*How do I comment on this proposed AD?* We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

*Are there any specific portions of the proposed AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might require a change to the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at <http://www.faa.gov/language/>.

*How can I be sure FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000-CE-34-AD." We will date stamp and mail the postcard back to you.

##### Discussion

*What events have caused this proposed AD?* The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Socata Models MS 880B, MS 885, MS 892A-150, MS 892E-150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235C, and Rallye 235E airplanes. The DGAC reports one failure of the rudder clevis in a Rallye airplane in flight. Abnormal wear of the part resulted in the failure.

*What happens if you do not correct the condition?* This condition, if not corrected, could result in failure of the rudder and elevator clevis and consequent loss of directional or pitch control.

##### Relevant Service Information

*Is there service information that applies to this subject?* Socata has issued Mandatory Service Bulletin SB 155-27, dated April, 2000.

*What are the provisions of this service bulletin?* The service bulletin describes procedures for:

- repetitively inspecting the elevator and rudder governor control clevis; and
- if necessary, replacing any clevis that is too thin.

*What actions did the DGAC take?* The DGAC issued French AD number 2000-174(A), dated May 3, 2000, in order to assure the continued airworthiness of these airplanes in France.

*Was this in accordance with the bilateral airworthiness agreement?* Socata manufactured these airplane models in France. The FAA type certificated these airplane models for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the DGAC informed FAA of the situation described above.

##### The FAA's Determination and an Explanation of the Provisions of the Proposed AD

*What has FAA decided?* The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that: —the unsafe condition referenced in this document exists or could develop on other Socata Models MS 880B, MS 885, MS 892A-150, MS 892E-150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 100S, Rallye 150T,

Rallye 150ST, Rallye 235C, and Rallye 235E airplanes of the same type design;

- these airplanes should have the actions specified in the above service bulletin incorporated; and
- the FAA should take AD action to correct this unsafe condition.

*What does this proposed AD require?* This proposed AD requires you to repetitively inspect the elevator and rudder governor control clevis, and, if necessary, replace any clevis that is too thin.

*What are the differences between the French AD and the proposed AD?* The French AD requires inspection, and, if necessary, replacement of the elevator and rudder governor control clevis as soon as possible and, at the latest, during the next scheduled inspection after the effective date of the AD. We propose a requirement that you inspect, and, if necessary, replace the clevis within the next 100 hours time-in-service (TIS).

We do not have justification to require this action as soon as possible. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 100 hours TIS will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

##### Cost Impact

*How many airplanes does this proposed AD impact?* We estimate that the proposed AD would affect 81 airplanes in the U.S. registry.

*What is the cost impact of the proposed action for the affected airplanes on the U.S. Register?* We estimate that it would take approximately 4 workhours per airplane to accomplish the proposed inspection, at an average labor rate of \$60 an hour. Based on the cost factors presented above, we estimate the total cost impact of the proposed inspection on U.S. operators to be \$19,440, or \$240 per airplane.

If required, the total cost of parts per airplane is approximately \$24 per airplane every time you replace both clevises.

##### Regulatory Impact

*Does this proposed AD impact relations between Federal and State governments?* The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have

determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Does this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Socata—Groupe Aerospatiale:** Docket No. 2000–CE–34–AD.

(a) *What airplanes are affected by this AD?* The following model airplanes, all serial numbers, certificated in any category:

- MS 880B
- MS 892E–150
- MS 894A

- Rallye 150T
- Rallye 235E
- MS 885
- MS 893A
- MS 894E
- Rallye 150ST
- MS 892A–150
- MS 893E
- Rallye 100S
- Rallye 235C

(b) *Who must comply with this AD?*

Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?*

Our intent is that the actions specified in this AD correct rudder clevis and elevator control clevis that are too thin because of abnormal wear and the consequent failure of the rudder and elevator clevis. Such failure could lead to loss of directional or pitch control.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance times	Procedures
(1) Inspect the elevator and rudder control clevis abnormal wear. Measure clevis thickness. The thickness at the bent section should be at least 0.043 inch (in)/1.1 millimeter (mm).	(i) Within the next 100 hours time-in-service (TIS) after the effective date of this AD. (ii) After the initial inspection, inspect at intervals not to exceed every 600 hours TIS.	Do this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS of Socata Mandatory Service Bulletin SB 155–27, dated April 2000.
(2) If during inspection the elevator or rudder control clevis measures a thickness less than 0.043 in/1.1 mm, replace the clevis.	Before further flight after the inspection where abnormal wear was found after the effective date of this AD.	Do this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS of Socata Mandatory Service Bulletin SB 155–27, dated April 2000.
(3) Lubricate the clevis .....	At intervals not to exceed every 100 hours TIS.	Do this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS of Socata Mandatory Service Bulletin SB 155–27, dated April 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

- (1) Your alternative method of compliance provides an equivalent level of safety; and
- (2) The Manager, Small Airplane Directorate approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note 1:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the

unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329-4146; facsimile: (816) 329-4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes,

BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894-1160; facsimile: (954) 964-4191. You may read these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note 2:** French AD 2000–174(A), dated May 3, 2000, addresses this subject.

Issued in Kansas City, Missouri, on September 1, 2000.

**Carolanne L. Cabrini,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–23209 Filed 9–8–00; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2000-SW-30-AD]

**Airworthiness Directives; Eurocopter France Model AS-350B, BA, B1, B2, and D; and AS-355E, F, F1, F2, and N Helicopters****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD) for Eurocopter France Model AS-350B, BA, B1, B2, and D; and AS-355E, F, F1, F2, and N helicopters.

That AD currently requires inspecting the main gearbox suspension bi-directional cross beam (cross beam) for cracks, replacing the cross beam if a crack is found, and adding time intervals for repetitive dye-penetrant inspections on cross beams with 5,000 or more hours time-in-service (TIS). This action would require the same inspections as the existing AD but would delete repetitive dye-penetrant inspections on cross beams with 5,000 or more hours TIS. This proposal is prompted by the discovery that repetitive dye-penetrant inspections were erroneously required in the existing AD. The actions specified by the proposed AD are intended to prevent failure of the cross beam that could lead to rotation of the main gearbox, severe vibrations, and a subsequent forced landing.

**DATES:** Comments must be received on or before November 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW-30-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: [9-asw-adcomments@faa.gov](mailto:9-asw-adcomments@faa.gov). Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5490, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000-SW-30-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

You may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW-30-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

On May 11, 2000, the FAA issued AD 2000-10-10, Amendment 39-11734 (65 FR 32016, May 22, 2000), to require visual and dye-penetrant inspections of the cross beam for cracks and replacement with an airworthy cross beam if a crack is found.

That action also added a time interval for repetitive dye-penetrant inspections on cross beams with 5,000 or more hours TIS. That action was prompted by several reports of cracks in the cross beam. The requirements of that AD are intended to prevent failure of the cross beam that could lead to rotation of the main gearbox, severe vibrations, and a subsequent forced landing.

Since the issuance of that AD, the FAA has received a comment from the manufacturer stating that the repetitive dye-penetrant inspection of the cross beam after 5,000 hours was in error.

That error was corrected by Maintenance Note 05.09, dated July 11, 1997, and an Erratum to Eurocopter France Service Bulletin Nos. 05.00.28 and 05.00.29, both dated May 26, 1996. The dye-penetrant inspection for cracks must be performed within 550 hours TIS or 2,750 operating cycles, whichever occurs first, after the cross beams attain 5,000 hours TIS. The FAA has evaluated all the available information and agrees that the repetitive dye-penetrant inspection is not needed in the interest of aviation safety.

We have identified an unsafe condition that is likely to exist or develop on other Eurocopter France Model AS-350B, BA, B1, B2, and D, and Model AS-355E, F, F1, F2, and N helicopters of these same type designs. The proposed AD would supersede AD 2000-10-10 to contain the same requirements but would delete the requirement to perform repetitive dye penetrant inspections.

The FAA estimates that 454 helicopters of U.S. registry would be affected by this proposed AD. It would take approximately 0.5 work hour to accomplish each visual inspection, with an estimated average of 150 visual inspections, 3 work hours to accomplish a dye-penetrant inspection, and 6 work hours to replace the cross beam, if necessary per helicopter. The average labor rate is \$60 per work hour. Parts would cost approximately \$6,000 per cross beam. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$5,012,160 to perform 150 visual inspections, one dye-penetrant inspection, and to replace one cross beam on all 454 helicopters.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11734 (65 FR 32016, May 22, 2000) and by adding a new airworthiness directive (AD) to read as follows:

**Eurocopter France:** Docket No. 2000–SW–30–AD. Supersedes AD 2000–10–10, Amendment 39–11734, Docket No. 99–SW–39–AD.

**Applicability:** Model AS–350B, BA, B1, B2, and D; and AS–355E, F, F1, F2, and N helicopters, with main gearbox suspension bi-directional cross beam (cross beam), part number (P/N) 350A38–1018-all dash numbers, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the cross beam that could lead to rotation of the main gearbox, severe vibrations, and a subsequent forced landing, accomplish the following:

(a) For cross beams having 2,000 or more hours time-in-service (TIS) or 10,000 or more operating cycles, whichever occurs first:

**Note 2:** The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Within 30 hours TIS, and thereafter at intervals not to exceed 30 hours TIS or 150 operating cycles, whichever occurs first, visually inspect the cross beam for a crack in accordance with paragraph 2.B.1) of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter France Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1997.

(2) If a crack is found, remove the cross beam and replace it with an airworthy cross beam.

(b) For cross beams having 5,000 or more hours TIS:

(1) Within 550 hours TIS or 2,750 operating cycles, whichever occurs first, perform a dye-penetrant inspection in accordance with paragraph 2.B.2) of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1996.

(2) If a crack is found, remove the cross beam and replace it with an airworthy cross beam.

(c) Before installing any replacement cross beams, regardless of TIS or operating cycles, inspect the replacement cross beam in accordance with paragraph (b)(1) of this AD.

(d) Modifying the helicopter in accordance with paragraph 2.B of the Accomplishment Instructions in Eurocopter Service Bulletin No. 63.00.07, applicable to Model AS–350B, BA, B1, B2, and D helicopters, or Eurocopter Service Bulletin No. 63.00.13, applicable to Model AS–355E, F, F1, F2, and N helicopters, both dated April 7, 1997, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–156–071(B)R1 and AD 96–155–053(B)R1, both dated June 4, 1997.

Issued in Fort Worth, Texas, on September 1, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–23210 Filed 9–8–00; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 00–AEA–03]

#### Proposed Amendment to Class E Airspace; Salisbury, MD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Salisbury, MD. Establishment of Class D airspace at Salisbury, MD, necessitated by the opening of a new Control Tower (ATCT) at the airport, requires this action be taken to amend the Class E airspace.

**DATES:** Comments must be received on or before October 11, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 00–AEA–03, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7 Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 00-AEA-03." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA-7, Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434-4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Salisbury, MD. Class D airspace extending upward from the surface to and including 2,500 feet MSL is now in effect during times as published in the Airport Facility Directory. During other periods of time the airspace reverts back to Class E airspace. Class E airspace designations for airspace areas extending upward from the surface are published in Paragraph 6002 of FAA Order 7400.9F, dated September 10, 1999, and effective September 16, 1999, which in incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

#### The Rule

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposal rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR Part 71 as follows:

#### PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1999, and effective September 16, 1999, is proposed to be amended as follows:

*Paragraph 60002 Class E airspace areas extending upward from the surface of the earth.*

\* \* \* \* \*

#### AEA MD E2 Salisbury, MD [Revised]

Salisbury-Ocean City, Wicomico County Regional Airport, MD  
(Lat. 38°20.43' N./long. 75°30.62' W.)

Within a 4.1 mile radius of the Salisbury-Wicomico County Airport and within 3.1 miles each side of the Salisbury VORTAC 209° radial extending from the 4.1 mile radius to 9.2 miles southwest of the VORTAC and within 3.1 miles each side of the Salisbury VORTAC 052° radial extending from the 4.1 mile radius to 8.3 miles northeast of the VORTAC and within 1 mile each side of the Salisbury-Wicomico County Airport localizer northwest course extending from the 4.1 mile radius to 4.8 miles northwest of the localizer and within 3.1 miles each side of the Salisbury VORTAC 132° radial extending from the 4.1 mile radius to 9.2 miles southeast of the VORTAC. This Class E airspace area is effective during those times when the Class D airspace is not in effect.

\* \* \* \* \*

Dated: Issued in Jamaica, New York, on September 1, 2000.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 00-23265 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 00-AEA-04]

#### Proposed Amendment to Class E Airspace; Westminster Clearview Airpark, MD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Westminster, MD. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Clearview Airpark (2W2), Westminster, MD has made this proposal necessary. Sufficient controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before October 11, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA-520, Docket No. 00-AEA-04, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

The official docket may be examined in the Office of the Regional Counsel, AEA-7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA-520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA-520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809, telephone: (718) 553-4521.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and

be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00-AEA-04." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA-7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Westminster, MD. Class E airspace designations for airspace areas extending upward from 700 ft Above Ground Level (AGL) are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

#### The Rule

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

#### PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1999, and effective September 16, 1999, is proposed to be amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 ft above ground level.*

\* \* \* \* \*

#### AEA MD E5 Westminster Clearview Airpark, MD [Revised]

Clearview Airpark, Westminster, MD  
(Lat 39°28'01" N./long. 77°1'03" W.)

Within a 6.2 mile radius of Clearview Airpark and within 1.9 miles each side of the 136° bearing to the airport extending from the 6.2 mile radius to 8.7 miles northwest of the airport. This Class E airspace is effective from sunrise to sunset, daily.

\* \* \* \* \*

Issued in Jamaica, New York, on  
September 1, 2000.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*  
[FR Doc. 00-23266 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF COMMERCE

### Assistant Secretary for Technology Policy

#### 37 CFR Part 401

[Docket No. 95-0615153-0076-02]

RIN 0692-AA14

### Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements; Special Contracts To Provide Support Services for a Government-Owned and -Operated Laboratory Under a Cooperative Research and Development Agreement (CRADA) With a Collaborating Party

**AGENCY:** Assistant Secretary for Technology Policy, Commerce.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule would authorize Federal agencies to use an alternate patent rights clause in certain contracts with nonprofit organizations and small business firms to provide support services at a Government-owned and -operated laboratory in connection with a CRADA between the laboratory and a collaborating party.

**DATES:** Comments must be received on or before October 11, 2000.

**ADDRESSES:** Comments should be mailed to Mr. Jon Paugh, Director, Technology Competitiveness, Office of Technology Policy, Room 4418, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Raubitschek, Patent Counsel, at telephone: (202) 482-8010.

**SUPPLEMENTARY INFORMATION:** Under the authority of 35 U.S.C. 206 and the delegation by the Secretary of Commerce in section 3(g) of DOO 10-18, the Assistant Secretary of Commerce for Technology Policy may issue revisions to 37 CFR part 401.

Under the Bayh-Dole Act (Pub. L. 96-517), nonprofit and small business contractors and grantees have the option to retain rights in their inventions in order to facilitate the commercialization of the results of federally funded research. However, this option may be limited if an exceptional circumstances determination is made by the funding agency under 37 CFR 401.3(a)(2). The criteria for such a determination are exacting and the contractor may appeal such a determination. There is a need to limit the rights of certain contractors and grantees in their inventions when

they are performing research for the Government under a cooperative research and development agreement (CRADA) with a collaborating party as authorized by the Federal Technology Transfer Act (Pub. L. 99-502) (FTTA). If these rights are not limited, the collaborating party would not receive the rights to which it would normally be entitled under a CRADA, which includes the option for an exclusive license to any CRADA invention made by a Government employee. Contractors are now being used at certain federally-owned and -operated laboratories of various agencies such as the Department of Defense and the Environmental Protection Agency. The contracts are not usually entered into for securing research expertise of a particular company or individual but rather to provide general support to the operation of the laboratories.

Presently, some agencies using support contractors for CRADAs have notified their collaborating parties that they will endeavor to acquire the necessary rights from their contractors but cannot promise that those rights will be obtained. Other agencies preclude their contractors from working on CRADAs or permit them to own their inventions whether or not made under a CRADA. When the Department of Defense recently proposed a special clause for support contractors limiting rights in their inventions, the Department of Commerce was concerned that the exception was too broad and that the clause should encourage negotiation.

Since the laboratory's obligations under the FTFA do not technically apply to the inventions of its contractors, the Department of Commerce does not consider that there is an actual conflict between the Bayh-Dole Act and the FTFA. Nevertheless, we do believe that the situation presents a conflict between the general policies of the Bayh-Dole Act and the specific directives of the FTFA. We think that allowing a support contractor to work under a CRADA in such circumstances might be a negative factor or disincentive to the participation by private parties in a CRADA because they would not be assured of receiving rights in all CRADA inventions as mandated by the FTFA.

Accordingly, we propose to add as an alternate a new subparagraph to paragraph (b) of the basic patent rights clause that encourages the contractor to negotiate with the collaborating party but in the absence of an agreement, provides certain minimum rights for the collaborating party in the contractor's inventions. The provision of those

minimum rights in a contract constitutes an exceptional circumstances determination by the agency pursuant to 37 CFR 401.3(a)(2) and would be appealable under § 401.4. The rights would be of the same scope and terms the collaborating party would receive in an invention made by a Government employee under the CRADA, which is typically an option for an exclusive license. Although negotiation should occur prior to the contractor starting work under the CRADA, it could be postponed with the permission of the Government until an invention is made by the contractor under the CRADA. The procedures for using the alternate clause are provided in new § 401.3(a)(5). The alternate clause is optional and laboratories may allow support contractors to own their inventions made under a CRADA.

#### Classification

Administrative Procedure Act: Pursuant to section 553(a)(2) of the Administrative Procedure Act (APA) (5 U.S.C. 553(a)(2)), the Assistant Secretary of Commerce for Technology Policy finds that the notice and comments requirements of the APA are not applicable. The Technology Administration, however, is interested in the views of interested parties and is, thus, soliciting comments on this policy.

#### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866 (58 FR 51735, October 4, 1993).

#### Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

#### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the proposed rule change would not have a significant impact on a substantial number of small entities. The principal impact of the rule is to encourage negotiations between the support contractor and the laboratory's collaborating party under a CRADA.

#### Paperwork Reduction Act

This proposed rule will impose no collection of information requirements

under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 37 CFR Part 401

Inventions, Patents, Nonprofit Organizations, Small Business Firms.

For the reasons set forth in the preamble, 37 CFR part 401 is amended as follows:

#### PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

1. The authority citation for 37 CFR part 401 continues to read as follows:

**Authority:** 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce to the Assistant Secretary of Commerce for Technology Policy at sec. 3(g) of DOO 10-18.

2. Section 401.3 is amended by adding a new paragraph (a)(5) to read as follows:

#### § 401.3 Use of the standard clauses at § 401.14.

\* \* \* \* \*

(a) \* \* \*

(5) If any part of the contract may require the contractor to perform work on behalf of the Government at a Government laboratory under a Cooperative Research and Development Agreement (CRADA) pursuant to the statutory authority of 15 U.S.C. 3710a, the contracting officer may include alternate paragraph (b) in the basic patent rights clause in § 401.14. Because the use of the alternate is based on a determination of exceptional circumstances under § 401.3(a)(2), the contracting officer shall ensure that the appeal procedures of § 401.4 are satisfied whenever the alternate is used.

3. A new paragraph (c) is added to § 401.14 to read as follows:

#### § 401.14 Standard patent rights clauses.

\* \* \* \* \*

(c) As prescribed in § 401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) *Allocation of principal rights.* (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs support services at a Government owned and

operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to try to negotiate an agreement with the CRADA collaborating party or parties over the rights to any subject invention the Contractor makes, solely or jointly, in the course of its work under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

**Kelly H. Carnes,**

*Assistant Secretary of Commerce for Technology Policy.*

[FR Doc. 00-23080 Filed 9-8-00; 8:45 am]

BILLING CODE 3510-18-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 50, 52 and 81

[FRL-6867-9]

RIN 2060-AJ05

#### Rescinding the Finding that the Pre-existing PM-10 Standards Are No Longer Applicable in Northern Ada County/Boise, ID

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice to reopen the comment period.

**SUMMARY:** Today, EPA is reopening the public comment period on EPA's notice of proposed rulemaking "Rescinding the Finding that the Pre-existing PM-10 Standards are No Longer Applicable in Northern Ada County/Boise, Idaho," published June 26, 2000 at 65 FR 39321. The original comment period was to close on July 26, 2000. We had previously extended the comment period to August 31, 2000 but due to the number of comments received so far, and the type of concerns expressed about the impact this decision may potentially have on the public, we feel it is appropriate to reopen the comment period and provide an additional 30 days for interested and affected parties to submit comments. The new closing date will be 30 days from the date of publication of this notice. You can find this notice, once it's published, and all **Federal Register** notices from 1995-2000 online at [http://www.access.gpo.gov/su\\_docs/aces/](http://www.access.gpo.gov/su_docs/aces/)

[aces140.html](http://aces140.html). All comments received by EPA during the public comment period will be considered in the development of a final rule.

In our June 26, 2000 proposal we also proposed to amend 40 CFR part 50. Specifically, we proposed to delete 40 CFR 50.6(d) in its entirety consistent with our decision that, in light of the U.S. Court of Appeals for the D.C. Circuit's opinion in American Trucking Association in which, among other things, the Court vacated EPA's revised PM-10 standards, the pre-existing PM-10 standards, as reflected in subsections (a) and (b) of 40 CFR 50.6, should continue to apply in all areas. The effect of this action would be that the pre-existing PM-10 standards, as codified at 40 CFR 50.6(a) and (b), would remain applicable to all areas. To date, we have not received any comments on this aspect of the June 26, 2000 proposal. Therefore, we are not reopening the comment period on this portion of the proposal. Instead, we will take final action on this portion of the proposal in a separate **Federal Register** document.

**DATES:** All comments regarding EPA's notice of proposed rulemaking issued on June 26, 2000 must be received by EPA on or before close of business on the last day of the new public comment period October 11, 2000.

**ADDRESSES:** Comments should be submitted to:

*On paper.* Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-2000-13, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, telephone (202) 260-7548.

*Electronically.* Send electronic comments to EPA at: A-and-R-Docket@epa.gov. Avoid sending confidential business information (CBI). We accept comments as e-mail attachments or on disk. Either way, they must be in WordPerfect version 5.1, 6.1 or Corel 8 file format. Avoid the use of special characters and any form of encryption. You may file your comments on this proposed rule online at many Federal Depository Libraries. Be sure to identify all comments and data by docket number A-2000-13.

*Public inspection.* You may read the proposed rule (including paper copies of comments and data submitted electronically, minus anything claimed as CBI) at the Office of Air and Radiation Docket and Information Center located at 401 M Street, SW, Washington, DC 20460. They are available for public inspection from 8 a.m. to 5:30 p.m., Monday through

Friday, excluding legal holidays. A reasonable fee may be charged for copying.

#### FOR FURTHER INFORMATION CONTACT:

Questions about the proposal should be addressed to Gary Blais, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Integrated Policy and Strategies Group, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-3223 or e-mail to [blais.gary@epa.gov](mailto:blais.gary@epa.gov). To ask about policy matters specifically regarding Northern Ada County/Boise, call Bonnie Thie, EPA Region 10, Office of Air Quality (OAQ-107), EPA, Seattle, Washington, (206) 553-1189.

Dated: August 31, 2000.

**Henry C. Thomas,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 00-23236 Filed 9-8-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 226-0226; FRL-6865-8]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District and Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing a limited approval to revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) concerning particulate matter (PM-10) (There are two separate national ambient air quality standards (NAAQS) for PM-10, an annual standard of 50 µg/m<sup>3</sup> and a 24-hour standard of 150 µg/m<sup>3</sup>) emissions and carbon monoxide (CO) emissions from incineration and from fuel burning equipment.

The intended effect of proposing a limited approval of these rules is to strengthen the federally approved SIP by incorporating this revision. EPA's final action on this proposal will incorporate these rules into the SIP. While strengthening the SIP, this revision contains deficiencies which the VCAPCD must address before EPA can grant full approval under section 110(k)(3).

We are also proposing full approval of a revision to the BAAQMD portion of the California SIP concerning nitrogen oxide (NO<sub>x</sub>) emissions from boilers, steam generators, and process heaters.

We are following the CAA requirements for actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for attainment and nonattainment areas.

**DATES:** Any comments must arrive by October 11, 2000.

**ADDRESSES:** Mail comments to: Andrew Steckel, Chief, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and our technical support document (TSD) at our Region IX office from 8 am to 4:30 pm, Monday through Friday. To see copies of the submitted rule revisions,

you may also go to the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94105.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1135.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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## I. The State's Submittal

### A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted to us by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD .....	Manual of Procedures 1-5 .....	Boiler, Steam Generator, and Process Heater Tuning Procedure.	09/15/93	07/23/96
VCAPCD .....	57 .....	Combustion Contaminants—Specific	06/14/77	01/21/00
VCAPCD .....	68 .....	Carbon Monoxide .....	06/14/77	01/21/00

On October 30, 1996, March 1, 2000, and March 1, 2000, respectively, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

### B. Are There Other Versions of These Rules?

There are no previous versions of BAAQMD Manual of Procedures, Volume I, Chapter 5 in the SIP.

We previously approved a version of VCAPCD Rule 57 into the SIP on August 15, 1977 (42 FR 41121).

We previously approved a version of VCAPCD Rule 68 into the SIP on September 22, 1972 (37 FR 19806).

### C. What Are the Purposes or Changes in the Submitted Rules?

BAAQMD Rule Manual of Procedures Volume I, Chapter 5 is a step-wise procedure for tuning boilers, steam generators, and process heaters to provide sufficient oxygen for complete combustion, but not too much oxygen for minimization of NO<sub>x</sub> formation. The tuning procedure is required by BAAQMD Rule 9-7, Nitrogen Oxides and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.

VCAPCD Rules 57 and 68 both add an exemption for jet engine and rocket engine test stands to the fuel burning equipment sections of the rules.

## II. EPA's Evaluation and Action

### A. How Is EPA Evaluating the Rules?

We evaluated these rules for enforceability and consistency with the CAA as amended in 1990, with 40 CFR part 51, and with EPA's RACT Guidance, NO<sub>x</sub> policy, and PM-10 policy. BAAQMD is a NO<sub>x</sub> attainment area and an ozone nonattainment area.<sup>1</sup> Ozone nonattainment areas must meet the requirements of RACT according to section 172(c)(1) of the CAA. VCAPCD is a PM-10 maintenance attainment area and a CO attainment area.

Guidance and policy documents that we used to evaluate the rules are as follows:

<sup>1</sup> On July 10, 1998 (63 FR 37258), EPA published the final rule redesignating the San Francisco Bay Area to nonattainment with the federal 1-hour ozone NAAQS. The redesignation was authorized under the general nonattainment provisions of subpart 1 of the Act. The Bay Area, therefore, does not have a subpart 2 classification. When comparing air quality in the Bay Area to the traditional subpart 2 classification system, the Bay Area's design value is equivalent to that of a moderate area.

- *PM-10 Guideline Document* (EPA-452/R-93-008).
- *Sourcebook: NO<sub>x</sub> Control Technical Data* (EPA-600/2-91-029).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register* (52 FR 45044) (The Blue Book).

### B. Do the Rules Meet the Evaluation Criteria?

BAAQMD Manual of Procedures, Volume I, Chapter 5 meets the evaluation criteria.

The adoption of revised VCAPCD Rules 57 and 68 improves the SIP by bringing the SIP into conformance with long historical practice in the District. Although, the addition of an exemption may, under certain circumstances, lessen the stringency of the SIP, approval of the revised Rules VCAPCD 57 and 68 is not inconsistent with sections 110(l) and 193 of the CAA for the following reasons:

- There are two sources of jet engine and rocket engine test stand PM-10 emissions in the VCAPCD that are regulated by permit and are allowed to emit up to 2.13 and 5.44 tons/year PM-10, respectively. These small uncontrolled sources are included in the

air quality management plan for the District without any credit taken for controls. Therefore, exempting these small sources from Rule 57 will not cause a violation of the NAAQS for PM-10.

- There are two sources of jet engine and rocket engine test stand CO emissions in the VCAPCD that are regulated by permit are allowed to emit up to 839 and 17 tons/year CO, respectively. These uncontrolled sources are included in the air quality management plan for the District without any credit taken for controls. In a letter from CARB to EPA Region IX dated May 7, 1979, CARB concluded that the exemption to Rule 68 would not prevent attainment or maintenance of the NAAQS for CO. Therefore, we do not expect these sources to cause a violation of the NAAQS for CO.

### C. What Are the Rule Deficiencies?

VCAPCD Rules 57 and 68 have the following deficiencies that prevent full approval:

- The enforceability is limited, because EPA-approved test methods are not included in the rules.
- The enforceability is limited, because monitoring is not required by the rules.
- The enforceability is limited, because recordkeeping is not required by the rules.

### D. EPA Recommendations To Further Improve the Rules

The TSD for VCAPCD Rule 68 describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies the rules.

### E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, we are proposing

a limited approval of VCAPCD Rules 57 and 68 to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP. No sanctions under section 179 are associated with this proposed action.

As authorized in section 110(k) of the Act, we are proposing a full approval of BAAQMD Manual of Procedures, Volume I, Chapter 5 to improve the SIP.

We will accept comments from the public on the proposed full approval and proposed limited approvals for the next 30 days.

## III. Background Information

### A. Why Were These Rules Submitted?

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM-10 rules.

TABLE 2.—PM-10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978 .....	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987 .....	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM-10). 52 FR 24672.
November 15, 1990 .....	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
November 15, 1990 .....	PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 189(a). States are required by section 110(a) to submit rules regulating PM-10 emissions in order to achieve the attainment dates specified in section 188(c).

CO harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control CO emissions. Table 3 lists some of the national milestones leading to the submittal of local agency CO rules.

TABLE 3.—CO NONATTAINMENT MILESTONES

Date	Event
March 3, 1978 .....	EPA promulgated a list of CO nonattainment areas under the Clean Air Act, as amended in 1977. 40 CFR 81.305.
November 15, 1990 .....	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
November 15, 1990 .....	CO areas meeting the qualifications of section 107(d)(4)(A) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 186(a). States are required by section 110(a) to submit rules regulating CO emissions in order to achieve the attainment dates specified in section 186(a)(1).

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> emissions. Table 4 lists some of the national milestones leading to the submittal of these local agency NO<sub>x</sub> rules.

TABLE 4.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1987 .....	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988 .....	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.

TABLE 4.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
November 15, 1990 .....	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991 .....	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

#### IV. Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

##### B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected

officials and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today’s proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

##### D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

##### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective

and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *G. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, and Particulate matter.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 23, 2000.

**Nora McGee,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00-22976 Filed 9-8-00; 8:45 am]

**BILLING CODE 6560-50-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[DA 00-2031, MM Docket No. 00-163, RM-9934]

#### **Digital Television Broadcast Service; Thief River Falls, MN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Red River Broadcast Company, LLC, licensee of station KBRR(TV), NTSC Channel 10, Thief River Falls, Minnesota, requesting substitution of DTV Channel 32 for station KBRR(TV)'s assigned DTV Channel 57. DTV Channel 32 can be allotted to Thief River Falls, Minnesota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (48-01-19 N. and 96-22-12 W.). However, since the community of Thief River Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel 32 to Thief River Falls with a power of 1000 and a height above average terrain (HAAT) of 183 meters.

**DATES:** Comments must be filed on or before October 30, 2000, and reply comments on or before November 14, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John T. Scott, III, Crowell & Moring LLP, 1001 Pennsylvania Avenue, NW, Washington, DC 20004 (Counsel for Red River Broadcast Company).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-163, adopted September 7, 2000, and released September 8, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00-23272 Filed 9-8-00; 8:45 am]

**BILLING CODE 6712-01-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[DA 00-2030, MM Docket No.00-162, RM-9948]

#### **Digital Television Broadcast Service; Fresno, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Fisher Broadcasting-Fresno, L.L.C., licensee of Station KJEO(TV), NTSC Channel 47, Fresno, California, requesting the substitution of DTV Channel 34 for Station KJEO(TV)'s assigned DTV Channel 14. DTV Channel 34 can be allotted to Fresno, California, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (37-04-14 N. and 119-25-31 W.). As requested, we propose to allot DTV Channel 34 to Fresno with a power of 330 and a height above average terrain (HAAT) of 597 meters.

**DATES:** Comments must be filed on or before October 30, 2000, and reply comments on or before November 14, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Clifford M. Harrington, Brendan Holland, Shaw Pittman, 2001 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006 (Counsel for Fisher Broadcasting-Fresno, L.L.C.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-162, adopted September 7, 2000, and

released September 8, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00-23269 Filed 9-8-00; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00-1963, MM Docket No. 00-153, RM-9936; MM Docket No. 00-154, RM-9935]

#### Radio Broadcasting Services; Marceline, MO, Fair Haven, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on two petitions for rule making requesting FM channel allotments at Marceline, MO, and Fair Haven, VT. Channel 256A can be allotted to Marceline in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 kilometers (4.5 miles) northeast, at coordinates 39-44-42 NL; 92-52-33 WL, to avoid a short-spacing to Station KQRC-FM, Channel 255C, Leavenworth, Kansas. Channel 223A can be allotted to Fair Haven in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, without the imposition of a site restriction at coordinates 43-35-41 NL; 73-15-58

WL. Fair Haven is located within 320 kilometers (200 miles) of the U.S.-Canadian border and the allotment, at the proposed coordinates, will result in a 29.1 kilometer short-spacing to Station CFQR-FM, Channel 223C1, Montreal, Quebec, Canada. Therefore, concurrence by the Canadian Government in the allotment, as a specially negotiated short-spaced allotment, must be obtained.

**DATES:** Comments must be filed on or before October 16, 2000, and reply comments on or before October 31, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: RC Broadcasting Company, 9118 NE 198th Street, Trimble, MO 64492 (Petitioner in RM-9936); Vermont Community Radio c/o Peter Morton, Vice President, Research, P.O. Box 8260, Essex, VT 05451-8260 (Petitioner in RM-9935).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket Nos. 00-153, 00-154, adopted August 16, 2000, and released August 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00-23211 Filed 9-8-00; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 090600B]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination to issue EFPs to conduct experimental fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The Northeast Region has received a request to allow several purse seine vessels to fish in Closed Area I. Therefore, this document invites comments on the issuance of EFPs to conduct experimental fishing with a maximum of 5 commercial fishing vessels. The EFPs would allow tuna purse seine vessels to fish for giant bluefin tuna in Northeast Multispecies Closed Area I, where purse seine gear is normally prohibited. This exempted fishery would allow NMFS and the New England Fishery Management Council to evaluate the feasibility of allowing this type of gear in the closed area as an exempted gear on a permanent basis.

**DATES:** Comments on this document must be received by September 12, 2000.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Proposed EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones or Peter W. Christopher, Fishery Policy Analysts, (978) 281-9273 and (978) 281-9288.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Georges Bank and Southern New England Southern New England (SNE) multispecies closed areas were established under the Northeast Multispecies FMP to provide protection to concentrations of multispecies, particularly for cod, haddock and yellowtail flounder. Consequently, all fishing in these closed areas was prohibited, with few exceptions. The exceptions were limited to fisheries that are known to have a very low occurrence of multispecies bycatch. For example, pelagic midwater trawl was determined to have a negligible catch of multispecies because the gear fishes well off the ocean floor; therefore, it is an allowed gear in the Georges Bank and SNE closed areas. Purse seine gear is a

pelagic gear that is typically used to target species such as herring, mackerel, and tuna concentrated at or near the surface of the ocean. It is not designed to fish for species at or near the ocean floor and is typically considered to have very little interaction with bottom dwelling species. However, observer data from the tuna purse seine fishery from 1996, the last year this fishery carried observers, do document a small catch of groundfish and bottom-dwelling organisms.

**Proposed EFP**

The proposed EFP would exempt purse seine vessels fishing for giant bluefin tuna under 50 CFR part 635 from the gear restrictions of Closed Area I, as described at 50 CFR 648.81(a). There would be no more than 5 vessels fishing individual quotas, which may be taken through the end of the fishing year, but are usually taken by the middle of October. Because these fish are migrating, it is expected that the

fishery would take place within the closed area for only a few weeks. If selected, vessels would be required to carry observers, if requested by NMFS, who would document catch of all species, interactions of the net with the bottom, and any incidental take of marine mammals and endangered species. After any sampling requested by an observer, all multispecies would be required to be discarded.

EFPs would be issued to the participating vessels in accordance with the conditions stated therein, and will exempt vessels from the restrictions of Closed Area I of the Northeast Multispecies Fishery Management Plan.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 6, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 00-23285 Filed 9-6-00; 4:46 pm]

**BILLING CODE 3510-22-S**

# Notices

Federal Register

Vol. 65, No. 176

Monday, September 11, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### Action Affecting Export Privileges; Peter H. Lee

#### Order Denying Export Privileges

On March 26, 1998, Peter H. Lee (Lee) was convicted in the United States District Court for the Central District of California on, *inter alia*, one count of violating Section 793(d) of the Espionage Act (18 U.S.C.A. 792–799 (1976 & Supp. 2000)). Lee, having lawful possession of information relating to the national defense of the United States, was convicted of willfully attempting to communicate said information to a person not entitled to receive it, namely an agent of the People's Republic of China (PRC), with reason to believe the information could be used to the advantage of the PRC.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991 & Supp. 2000)) (the Act),<sup>1</sup> provides that, at the discretion of the Secretary of Commerce,<sup>2</sup> no person convicted of violating Section 793 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774

(2000), as amended (65 FR 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Section 793 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Lee's conviction for violating Section 793(d) of the Espionage Act, and after providing notice and an opportunity for Lee to make a written submission to the Bureau of Export Administration before issuing an order denying his export privileges, as provided in Section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Lee's export privileges for a period of eight years from the date of his conviction. The eight-year period ends on March 26, 2006. I have also decided to revoke all licenses issued pursuant to the Act in which Lee had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*.

I. Until March 26, 2006, Peter H. Lee, 1447 2nd Street, Manhattan Beach, California 90266, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is

subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control or any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquired or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Lee by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction

<sup>1</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 FR 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)).

<sup>2</sup> Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until March 26, 2006.

VI. In accordance with Part 756 of the Regulations, Lee may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Lee. This Order shall be published in the **Federal Register**.

Dated: August 29, 2000.

**Eileen M. Albanese,**

*Director, Office of Exporter Services.*

[FR Doc. 00-23169 Filed 9-8-00; 8:45 am]

**BILLING CODE 3510-DT-M**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### Action Affecting Export Privileges; Daniel A. Malloy

#### Order Denying Export Privileges

On December 13, 1999, Daniel A. Malloy (Malloy) was convicted in the United States District Court for the District of New Jersey of Violating Section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990 & Supp. 2000)) (the AECA). Specifically, Malloy was convicted of knowingly and willfully engaging, aiding and abetting, and causing others to engage in the business of exporting defense articles designated by and on the United States Munitions List without registering with the United States Department of State, Office of Defense Trade Controls.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401-2420 (1991 & Supp. 2000)) (the Act)<sup>1</sup> provides that, at the discretion of the Secretary of Commerce,<sup>2</sup> no person convicted of violating the AECA, or

certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2000), as amended (64 FR 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Malloy's conviction for violating the AECA, and after providing notice and an opportunity for Malloy to make a written submission to the Bureau of Export Administration before issuing an Order denying his export privileges, as provided in Section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Malloy's export privileges for a period of eight years from the date of his conviction. The eight-year period ends on December 13, 2007. I have also decided to revoke all licenses issued pursuant to the Act in which Malloy had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*.

I. Until December 13, 2007, Daniel A. Malloy, currently incarcerated at: Allenwood Federal Prison Camp, Number 21436-050, P.O. Box 1000, Montgomery, Pennsylvania 17752, and with an address at: 811 Carol Place, Oradell, New Jersey 07649, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding,

transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

H. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Malloy by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to

<sup>1</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 FR 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991 & Supp. 2000)).

<sup>2</sup> Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 13, 2007.

IV. In accordance with Part 756 of the Regulations, Malloy may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Malloy. This Order shall be published in the **Federal Register**.

Dated: August 29, 2000.

**Eileen M. Albanese,**

*Director, Office of Exporter Services.*

[FR Doc. 00-23170 Filed 9-8-00; 8:45 am]

**BILLING CODE 3510-DT-M**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### Action Affecting Export Privileges; Earl Edwin Pitts

#### Order Denying Export Privileges

On June 23, 1997, Earl Edwin Pitts (Pitts) was convicted in the United States District Court for the Eastern District of Virginia of violating Section 794(a) and (c) of the Espionage Act (currently codified at 18 U.S.C.A. 792-799 (1976 & Supp. 2000)). Pitts was convicted of knowingly and unlawfully combining, conspiring, confederating, and agreeing with other persons, both known and unknown to the Grand Jury, including officers of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Sluzhba Vneshney Rasvedi Rossii (SVVR), to knowingly and unlawfully communicate, deliver, and transmit information relating to the national defense of the United States, with intent and reason to believe that the same would be used to the injury of the United States and to the advantage of the then Union of Soviet Socialist Republics (USSR), and of knowingly and unlawfully attempting to communicate, deliver and transmit, directly and indirectly to the Russian Federation, a document relating to the national defense of the United States, classified SECRET, entitled "Counterintelligence Techniques: Identifying and Intelligence Officer" dated September 1989, with reason to believe that it would be used to the injury of the United States and to the advantage of the Russian Federation.

Section 11(h) of the Export Administration Act of 1979, as amended

(currently codified at 50 U.S.C.A. app; 2401-2420 (1991 & Supp. 2000)) (the Act),<sup>1</sup> provides that, at the discretion of the Secretary of Commerce,<sup>2</sup> no person convicted of violating Section 794 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2000), as amended (65 FR 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Section 794 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Pitt's conviction for violating Section 794(a) and (c) of the Espionage Act, and after providing notice and an opportunity for Pitts to make a written submission to the Bureau of Export Administration before issuing an Order denying his export privileges, as provided in Section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Pitts' export privileges for a period of 10 years from the date of his conviction. The 10-year period ends on June 23, 2007. I have also decided to revoke all licenses issued pursuant to the Act in which Pitts had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*.

I. Until June 23, 2007, Earl Edwin Pitts, currently incarcerated at: FCI Butner, Number 49408083, P.O. Box 1000, Butner, North Carolina 27509-1000, may not, directly or indirectly,

<sup>1</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 FR 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991 & Supp. 2000)).

<sup>2</sup> Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph,

servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Pitts by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until June 23, 2007.

VI. In accordance with Part 756 of the Regulations, Pitts may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Pitts. This Order shall be published in the **Federal Register**.

Dated: August 29, 2000.

**Eileen M. Albanese,**

*Director, Office of Exporter Services.*

[FR Doc. 00-23168 Filed 9-8-00; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-835]

#### Oil Country Tubular Goods From Japan: Preliminary Results of Antidumping Duty Administrative Review and Final Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review and final partial rescission of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on oil country tubular goods (OCTGs) from Japan in response to requests by U.S. Steel Group (petitioner), respondent Sumitomo

Metal Industries, Ltd. (SMI), and Drill-Quip Inc. (Dril-Quip), an importer of OCTGs. This review, initiated on September 24, 1999, covers exports of subject merchandise to the United States during the period August 1, 1998 through July 31, 1999 and five respondents: Hallmark Tubulars Ltd. (Hallmark), Itochu Corp. (Itochu), Itochu Project Management Corp. (IPM), Nippon Steel Corp. (Nippon), and SMI (64 FR 53318; October 1, 1999).

We have determined that SMI had no reviewable sales of subject merchandise during the period of review (POR) and that the review of SMI should therefore be rescinded. We also preliminarily determine that adverse facts available should be applied to the remaining respondents, which did not respond to our questionnaires. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Mark Hoadley, (202) 482-0666, or Thomas Gilgunn, (202) 482-0648, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

**Applicable Statute and Regulations:** Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 351 (April 1999).

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 11, 1995, the Department published in the **Federal Register** (60 FR 41058) the antidumping duty order on OCTGs from Japan. On August 26, 1999, Dril-Quip, an importer of OCTGs, requested an administrative review of Hallmark, Itochu, IPM, and Nippon. On August 31, 1999, petitioner and SMI requested that the Department conduct a review of SMI. The Department initiated this antidumping administrative review on September 24, 1999 (64 FR 53318; October 1, 1999). On October 13, 1999, petitioner requested a duty absorption determination for SMI and its exporter, Sumitomo Corporation (SC). On November 30, 1999, the Department issued its antidumping duty questionnaire to all five respondents. On December 30, 1999, Nippon informed the Department that it would

not participate in the review. After receiving the Department's antidumping questionnaires, Nippon, Itochu, IPM, and Hallmark failed to respond. The Department is conducting this review in accordance with section 751(a) of the Act.

#### Scope of Review

The products covered by this order are OCTG, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

#### Preliminary Rescission of Review for SMI

Based on SMI and SC's joint ownership in several corporations, we have found the two companies to be affiliated.<sup>1</sup> Because of this finding, we

<sup>1</sup> The Department found SMI and SC to be affiliated in the previous review on this basis. Oil

consider the relevant U.S. sales date to be the date of sale from SC's U.S. affiliate to the first unaffiliated U.S. customer, which is the U.S. affiliate's date of shipment.<sup>2</sup> None of the U.S. sales reported by SC, however, has a sale date within the POR. Therefore, we are rescinding our review of sales of merchandise produced by SMI. We will instruct Customs to liquidate entries made during this POR of merchandise produced by SMI at the rate entered. For more detailed analysis, see Memorandum to the File, U.S. Sales by SC (August 30, 2000).

### Duty Absorption

On October 13, 1999, petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR by SMI or its exporter SC. Section 751(a)(4) of the Act provides that, during a review initiated two or four years after publication of the order, the Department, if requested, shall determine whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because we have preliminarily determined to rescind the review of merchandise produced by SMI because of the absence of reviewable sales, the issue of duty absorption is moot.

### Imports by Dril-Quip

On January 14, 2000, Dril-Quip made a submission, with supporting documentation, arguing that the OCTGs it imported under temporary import bond (TIB), which were produced by

Nippon and exported to the United States by Hallmark, were not entered for consumption in the United States and, therefore, not subject to antidumping duties. Dril-Quip had, however, paid the cash deposit required by the Customs Service. Dril-Quip argued that its situation was analogous to that of Okura & Company, an importer of OCTGs from Japan involved in a previous review. See *Oil Country Tubular Goods From Japan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 64 FR 48589 (Sept. 7, 1999) (presenting the facts of the Okura transaction and the Department's preliminary analysis and conclusions, unmodified in *Oil Country Tubular Goods From Japan; Final Results of Antidumping Duty Administrative Review*, 65 FR 15305 (March 22, 2000)).

Section 632 of the Act and section 203 of the North American Free Trade Agreement (NAFTA) Act, 19 U.S.C. 1313 and 3333, respectively, implement Article 303 of the NAFTA, which addresses restrictions on drawback and duty deferral programs. See Statement of Administrative Action (NAFTA Act), H. Doc. No. 103-159, Vol. 1, 103d Cong., 1st Sess. 476 (1993). Article 303.3 of the NAFTA requires that merchandise imported into a NAFTA country under a duty deferral program, such as TIB, and subsequently reexported to another NAFTA country shall be treated by the first NAFTA country as if it were entered for consumption at the time of reexportation. For this reason, Dril-Quip was correctly required by Customs to pay a cash deposit on its importation of OCTGs. Because Dril-Quip had consumption entries, they are subject to antidumping review and, if warranted, the assessment of antidumping duties. As part of such review, we must calculate the export price or constructed export price of the subject merchandise, in accordance with section 772 of the Act, if the parties under review sell subject merchandise to either an unaffiliated U.S. purchaser or an unaffiliated purchaser for export to the United States. Evidence on the record shows that Nippon's sale of the OCTG in question to Itochu was the first sale to an unaffiliated party for export to the United States. Furthermore, evidence on the record indicates that Itochu and IPM's subsequent sale to Hallmark was also a sale to an unaffiliated party for export to the United States. See business proprietary version of Memorandum from Joseph A. Spetrini to Troy H. Cribb, *Applicability of Antidumping Duties to Dril-Quip, Inc.'s Temporary*

Import Bond Entries (August 30, 2000). However, as noted above, Nippon, Itochu, IPM, and Hallmark failed to respond to the Department's questionnaires. Consequently, as discussed below, the Department had no alternative but to apply an adverse facts available rate.

### Application of Facts Available

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides such information but the information cannot be verified, the Department shall use the facts otherwise available (FA) in reaching the applicable determination under this title.

As noted above, Nippon, Itochu, IPM, and Hallmark received questionnaires but did not respond to them, thereby withholding information requested by the Department. As such, consistent with sections 776(a)(2)(A) and (C) of the Act, we are forced to rely upon FA. Because these respondents have provided no information, sections 782(d) and (e) are inapplicable. Furthermore, we determine that these respondents did not cooperate to the best of their abilities to our requests for information, and that, pursuant to section 776(b) of the Act, the use of adverse FA is appropriate. While only Nippon explicitly stated that they would not participate in this review, the other three non-responding companies did not answer our questionnaire. We have made similar findings earlier in this proceeding. See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Oil Country Tubular Goods From Japan*, 60 FR 6506 (Feb. 2, 1995) ("Given that neither Nippon nor Sumitomo responded to the Department's questionnaire, we find that they have not cooperated in this investigation"); and, *Oil Country Tubular Goods From Japan; Notice of Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of Antidumping Administrative Review*, 62 FR 25889 (May 12, 1997) (OCTG Review 1) (using adverse FA with respect to NKK Corporation of Japan (NKK), which did not respond to our questionnaire after claiming that it had no sales during the POR).

Under section 776(b) of the Act, adverse FA may include reliance on information derived from: (1) the petition, (2) a final determination in the investigation, (3) any previous review

Country Tubular Goods From Japan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 64 FR 48589, 48591 (Sept. 7, 1999); see also Memorandum from Barbara E. Tillman to Robert S. LaRussa, Affiliation of Sumitomo Metal Industries Ltd. and Sumitomo Corporation (Aug. 31, 1999) (proprietary version). Neither SMI nor SC has placed information on the record of this review suggesting that the basis for this finding has changed. Petitioner, however, placed information on the record (Jan. 18, 2000) of this review indicating that SMI and SC's joint involvement has increased. Cf. *Certain Welded Carbon Steel Pipes and Tubes from Thailand; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 17590 (April 10, 1997) ("Because we find no evidence on the record of this review to change this previous determination we do not consider Saha Thai/SAF to be affiliated with any U.S. importer.").

<sup>2</sup> Invoicing takes place after the date of shipment. In accordance with Department policy, when invoice date falls after ship date, we use ship date as the date of sale. See, e.g., *Structural Steel Beams from South Korea; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 65 FR 6984, 6985 (Feb. 11, 2000); and, *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Final Determination of Sales at Less Than Fair Value*, 64 FR 38756, 38768 (July 19, 1999).

under section 751 of the Act or determination under section 753 of the Act, or (4) any other information placed on the record. We have determined to use the highest rate determined in any segment of the proceeding, 44.20 percent.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information using independent sources reasonably at its disposal. The Statement of Administrative Action, H.R. Doc. No. 103-316, 870 (1994) (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA*, at 870.

In accordance with section 776(c) of the Act, to corroborate secondary information the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. In this case, we have chosen to use the highest rate from any segment of the proceeding, which has been the "all others rate" throughout this proceeding, was used as the best information available rate for Nippon and Sumitomo in the investigation, and was used as the adverse FA rate for NKK in a previous review of this order (see OCTG Review 1). We corroborated the rate, which was originally taken from the petition, in OCTG Review 1, explaining: "That rate was based upon the difference between U.S. price of a representative OCTG product sold by one Japanese company and constructed value for that product. Our review of the information in the original petition pertaining to the price of the product and to the major inputs (e.g., iron ore, coke, scrap) and processes (ironmaking, steelmaking, and bloom and pipe production) used for the production of the final merchandise did not indicate that the analysis of the OCTG market in the petition is no longer appropriate to use as a basis for facts available." 62 FR at 25890. Nothing on the record of this review suggests that the rate we have selected does not represent reliable and relevant information. Moreover, because these four non-responding companies did not answer our questionnaire, we have no basis for comparing the circumstances of their sales, if they had any, to those facts submitted in the petition to ensure that the selected adverse FA rate is relevant. Furthermore, as this is the rate currently applicable to these respondents, we presume that if any of them could have demonstrated that its margin is lower, it would have participated and attempted to do so. Thus, in accordance with section 776(c),

we have corroborated this rate "to the extent practicable."

#### Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist:

Exporter/manufacturer	Per- cent <sup>1</sup>
Hallmark Tubulars Ltd .....	44.20
Itochu Corp .....	44.20
Itochu Project Management Corp ....	44.20
Nippon Steel Corp .....	44.20

<sup>1</sup> Weighted-average margin percentage.

Any interested party may request a hearing within 30 days of publication of this notice. Pursuant to 19 CFR 351.310(d), any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of these reviews for all shipments of OCTGs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of these reviews; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original investigation of sales at less than fair value (LTFV) or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other

producers and/or exporters of this merchandise, the cash deposit rate shall be 44.20 percent, the "all others" rate established in the LTFV investigation (58 FR 7531, February 8, 1993).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and (a)(2)(C) of the Act (19 USC 1675(a)(1) and (a)(2)(C)), and 19 CFR 351.221(b)(4).

Dated: August 30, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00-23255 Filed 9-8-00; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-810]

#### **Stainless Steel Bar From India: Initiation of Antidumping New Shipper Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping new shipper review.

**SUMMARY:** The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214, we are initiating this new shipper review.

**EFFECTIVE DATE:** September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Blanche Ziv or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4207 or (202) 482-1279, respectively.

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1999).

**SUPPLEMENTARY INFORMATION:****Background**

On August 3, 2000, the Department received a request from Snowdrop Trading PVT. LTD. ("Snowdrop"), pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214(b), to conduct a new shipper review of the antidumping duty order

on stainless steel bar from India. This order has an August semi-annual anniversary month.

**Initiation of Review**

Pursuant to 19 CFR 351.214(b), in its request of August 3, 2000, Snowdrop certified that it did not export subject merchandise to the United States during the period of investigation ("POI") (July 1, 1993 through December 31, 1993) and that it is not now and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of review ("POR"). Snowdrop submitted documentation establishing: (i) The date on which its stainless steel bar was first entered or withdrawn from warehouse, for consumption, or if the exporter or producer could not establish the date of first entry, the date on which it first shipped the subject merchandise

for export in the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. All provisions of 19 CFR 351.214 will apply to Snowdrop throughout the duration of this new shipper review. The standard period of review in a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month.

Antidumping duty proceeding	Period to be reviewed
India: Stainless Steel Bar, A-533-810: Snowdrop Trading PVT. LTD.	02/01/00—7/31/00

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: September 1, 2000.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00-23254 Filed 9-8-00; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-588-845]

**Stainless Steel Sheet and Strip in Coils From Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Final results of changed circumstance antidumping duty review, and determination to revoke order in part.

**EFFECTIVE DATE:** September 11, 2000.

**SUMMARY:** On July 31, 2000, the Department of Commerce ("the Department") published a notice of initiation of a changed circumstances antidumping duty review and preliminary results of review with intent to revoke, in part, the antidumping duty order on stainless steel sheet and strip in coils from Japan. We are now revoking this order in part, with regard to the following product: stainless steel razor blade, medical surgical blade, and industrial blades, as described in the "Scope" section of this notice, based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the importation or sale of this stainless steel coil, as so described.

**FOR FURTHER INFORMATION CONTACT:** Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-6412.

**SUPPLEMENTARY INFORMATION:****Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to

the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1, 1999).

**Background**

On October 22, 1999, the Department of Commerce ("the Department") received a request on behalf of Techni Edge Manufacturing Co., ("Techni Edge") for a changed circumstance review and an intent to revoke in part the antidumping duty (AD) order with respect to specific stainless steel sheet and strip from Japan. The Department received a letter on May 12, 2000 from petitioners (Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL-CIO/CLC, the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc. of CA) expressing no opposition to the request of Techni Edge for revocation in part of the order pursuant to a changed circumstance review with respect to the subject merchandise defined in the Scope of the Review section below.

We preliminarily determined that petitioners' affirmative statement of no interest constituted changed

circumstances sufficient to warrant a review and partial revocation of the order. Consequently, on July 31, 2000, the Department published an initiation of a changed circumstances review and preliminary results of review with an intent to revoke the order in part (65 FR 6155).

The merchandise under review is currently classifiable under subheading 7220.20.70 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

#### Scope of Changed Circumstance Review

The products covered by this exclusion request and changed circumstances review are certain stainless steel used for razor blades, medical surgical blades, and industrial blades and sold under proprietary names such as DSRIK7, DSRIKA, and DSRIK9. This stainless steel strip in coils is a specialty product with a thickness of 0.15 mm to 1,000 mm, or 0.006 inches to 0.040 inches, and a width of 6 mm to 50 mm, or 0.250 inches to 2.000 inches. The edge of the product is slit, and the finish is bright. The steel contains the following chemical composition by weight: Carbon 0.65% to 1.00%, Silicon 1.00% maximum, Manganese 1.00% maximum, Phosphorus 0.35% maximum, Sulfur 0.25% maximum, Nickel 0.35% maximum, Chromium 0.15% maximum, Molybdenum 0.30% maximum.

#### Comments

In the preliminary results, we provided parties the opportunity to comment. We did not receive any comments from the interested parties.

#### Final Results of Review and Partial Revocation of the Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning the stainless steel strip in coils from Japan and the fact that no interested parties objected to or otherwise commented on our preliminary results of review, constitute changed circumstances sufficient to warrant partial revocation of the order. Therefore, the Department is partially revoking the order on stainless steel sheet and strip in coils with respect to the product described above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.222(g)(i). This partial revocation applies to all unliquidated entries of the above-described merchandise not subject to

administrative review as of the date of publication in the **Federal Register** of these final results of changed circumstances review.

The Department will instruct the Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of any unliquidated entries of steel coil (*i.e.*, stainless steel razor blade, medical surgical blade, and industrial blades), as specifically described in the "Scope of Changed Circumstance Review" section above, and entered, or withdrawn from the warehouse, for consumption on or after January 4, 1999. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of steel coils entered or withdrawn from warehouse for consumption on or after the publication date of the final results of this circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(f)(4).

This notice also serves as a final reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.34(d)(1997). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

This changed circumstances review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216, 351.2221(c)(3), and 351.222(g) of the Department's regulations.

Dated: August 31, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00-23256 Filed 9-8-00; 8:45 am]

BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 090500B]

##### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT)

will hold a working meeting which is open to the public.

**DATES:** The GMT working meeting will begin Monday, October 2, 2000 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, October 3 through Friday, October 6 at 2 p.m.

**ADDRESSES:** The meetings will be held at the Pacific Fishery Management Council office, Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: 503-326-6352.

*Council address:* Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326-6352.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the GMT meeting is to prepare final recommendations regarding harvest levels and management for 2001. Members of the Council's Scientific and Statistical Committee and the Groundfish Advisory Subpanel may attend to discuss the results of recent stock assessments and 2001 harvest levels. The GMT will also prepare reports, recommendations, and analyses in support of various Council decisions through the remainder of the year. The following specific items comprise the draft agenda; (1) Prepare final acceptable biological catch (ABC) and optimum yield (OY) recommendations for 2001; (2) complete and/or review rebuilding plans for canary rockfish, cowcod, lingcod, and Pacific Ocean perch; (3) calculate limited entry, open access, and other allocations; (4) evaluate management options for 2001; (5) complete and/or review economic/social analysis of proposed harvest levels and management measures for 2001; (6) complete Stock Assessment and Fishery Evaluation document; (7) resolve any outstanding recreational data issues; evaluate the need for inseason management adjustments; and (8) review the permit stacking proposal and analysis.

Although non-emergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to

take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: September 5, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00-23252 Filed 9-8-00 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 13, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment

addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 5, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

*Office of Vocational and Adult Education*

*Type of Review:* New.

*Title:* Perkins Annual Levels of Performance.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 56.

*Burden Hours:* 2,800.

*Abstract:* This collection solicits proposed annual levels of performance from States and outlying areas in accordance with section 113(b)(3)(A)(v) of the Carl D. Perkins Vocational and Technical Education Act (PL 105-332).

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651. Requests may also be electronically mailed to the internet address OCIO\_IMG\_Issues@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708-6287 or via her internet address [Sheila\\_Carey@ed.gov](mailto:Sheila_Carey@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 00-23200 Filed 9-8-00; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[CFDA No. 84.170]

### Office of Postsecondary Education, Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Program:* The purpose of the Jacob K. Javits Fellowship (JKJ) Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise to undertake graduate study leading to a doctoral degree or a Master of Fine Arts (MFA) at accredited institutions of higher education in selected fields of the arts, humanities, or social sciences.

*Eligible Applicants:* Individuals who at the time of application have not yet completed their first full year of graduate study or will be entering graduate school in academic year 2001-2002, and who are eligible to receive any grant, loan, or work assistance pursuant to section 484 of the Higher Education Act, as amended, and intend to pursue a doctoral degree or MFA in fields selected by the JKJ Board at accredited U.S. institutions of higher education. Individuals must be U.S. citizens or nationals, permanent residents of the U.S., or citizens of any one of the Freely Associated States.

*Deadline for Transmittal of Applications:* November 17, 2000.

*Applications Available:* September 29, 2000.

*Available Funds:* \$1,179,330. The estimated amount of funds available under this competition is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, is contingent on final congressional action.

*Estimated Average Size of Awards:* \$27,200.

*Estimated Number of Awards:* 42 individual fellowships.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:* (a) The Education Department, General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85, 86, 97, 98 and 99; and (b) the regulations for this program in 34 CFR part 650.

**SUPPLEMENTARY INFORMATION:** *Stipend Level:* The Secretary will determine the JKJ fellowship stipend for the academic year 2001-2002 based on the level of support provided by the National Science Foundation (NSF) graduate fellowships, except that the amount will

be adjusted as necessary so as not to exceed the JKJ fellow's demonstrated level of financial need.

**Institutional Payment:** The Secretary will determine the institutional payment for the academic year 2001–2002 by adjusting the academic year 2000–2001 institutional payment, which is \$10,500 per fellow, by the U.S. Department of Labor's Consumer Price Index for the previous year. The institutional payment will be reduced by the amount an institution charges and collects from a fellowship recipient for tuition and fees.

**FOR FURTHER INFORMATION CONTACT:**

Carolyn Proctor, Jacob K. Javits Fellowship Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K St., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7542. The e-mail address for the Javits Program is: ope\_javits\_program@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the appropriate contact person listed in the preceding paragraph. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**For Applications Contact:** Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site at: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov). If you request an application from ED Pubs be sure to identify this competition as follows: CFDA 84.170.

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in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

**Program Authority:** 20 U.S.C. 1134–1134d.

Dated: September 5, 2000.

**Lee A. Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–23218 Filed 9–8–00; 8:45 am]

**BILLING CODE 4000–01–U**

**DEPARTMENT OF EDUCATION**

**[CFDA No. 84.200]**

**Office of Postsecondary Education, Graduate Assistance in Areas of National Need (GAANN); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001**

**Purpose of Program:** GAANN provides fellowships through academic programs and departments of institutions of higher education to assist graduate students with excellent records who demonstrate financial need and plan to pursue the highest degree available in their course of study.

**Eligible Applicants:** Academic programs and departments of institutions of higher education that meet the requirements in 34 CFR 648.2.

**Deadline for Transmittal of Applications:** December 15, 2000.

**Deadline for Intergovernmental Review:** February 13, 2001.

**Applications Available:** October 10, 2000.

**Available Funds:** \$13,353,640. The estimated amount of funds available for new awards under this competition is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, is contingent on congressional action.

**Estimated Range of Awards:**

\$110,040–\$750,000.

**Estimated Average Size of Awards:** \$165,060.

**Estimated Number of Awards:** 80.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 36 months.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, 99; and (b) the regulations for this program in 34 CFR part 648.

**SUPPLEMENTARY INFORMATION:**

**Stipend Level:** The Secretary will determine the GAANN fellowship

stipend for the academic year 2001–2002 based on the level of support provided by the National Science Foundation (NSF) graduate fellowships, except that the amount will be adjusted as necessary so as not to exceed the GAANN fellow's demonstrated level of financial need.

**Institutional Payment:** The Secretary will determine the institutional payment for the academic year 2001–2002 by adjusting the academic year 2000–2001 institutional payment, which is \$10,500 per fellow, by the U.S. Department of Labor's Consumer Price Index for the previous calendar year.

**Priorities**

**Absolute Priority:** Under 34 CFR 75.105(c)(3) and 34 CFR 648.33 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

A project funded under this priority must propose to provide fellowships in one or more of the following areas of national need: Biology, Chemistry, Computer and Information Sciences, Engineering, Geological and Related Sciences, Mathematics, and Physics.

**Invitational Priority:** Within the absolute priority specified in this notice, the Secretary is particularly interested in applications from programs in one or more of the academic areas of national need that will provide students with the opportunity for research or training in a foreign country. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive preference over other applications.

**FOR FURTHER INFORMATION CONTACT:**

Cosette H. Ryan, Graduate Assistance in Areas of National Need Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8521. Telephone: (202) 502–7637. The e-mail address for the GAANN Program is: [ope\\_gaann\\_program@ed.gov](mailto:ope_gaann_program@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the appropriate contact person listed in the preceding paragraph. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

*For Applications Contact:* Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-4-ED-PUBS, FAX: (301) 470-1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1-877-576-7734. You may also contact ED Pubs via its Web site at: <http://www.ed.gov/pubs/edpubs.html>.

The e-mail address is: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA #84.200.

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**Program Authority:** 20 U.S.C. 1135-1135ee.

Dated: September 5, 2000.

**A. Lee Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00-23219 Filed 9-8-00; 8:45 am]

**BILLING CODE 4000-01-U**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Pantex Plant

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, September 26, 2000, 1 p.m.-5 p.m.

**ADDRESSES:** Carson County Square House Museum, Fifth and Elsie Streets, Panhandle, TX.

**FOR FURTHER INFORMATION CONTACT:** Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120. Phone (806) 477-3125; Fax (806) 477-5896 or e-mail: [jjohnson@pantex.doe.gov](mailto:jjohnson@pantex.doe.gov).

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

#### Tentative Agenda

1:00 Agenda Review/Approval of Minutes  
1:15 Co-Chair Comments  
2:30 Task Force/Subcommittee Reports  
2:15 Ex-Officio Reports  
2:30 Updates—Occurrence Reports—DOE  
3:00 Break  
3:15 Presentation (To Be Decided)  
4:00 Public Comments  
4:45 Closing Comments  
5:00 Adjourn

**Public Participation:** The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

**Minutes:** Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371-5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537-3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal

holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on September 5, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-23231 Filed 9-8-00; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Los Alamos

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, September 27, 2000 6 p.m.—9 p.m.

**ADDRESSES:** Santa Clara Pueblo, Tribal Council Meeting Room, Santa Clara, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone (505) 989-1662; fax (505) 989-1752 or e-mail: [adubois@doeal.gov](mailto:adubois@doeal.gov).

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

#### Tentative Agenda

1. Opening activities 6-6:30 p.m.  
2. Public Comment 6:30-7 p.m.  
3. Committee Reports:  
4. Election  
5. Other Board business will be conducted as necessary.

This agenda is subject to change at least one day in advance of the meeting.

**Public Participation:** The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to

conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

**Minutes:** Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: <http://www.nnmcab.org>.

Issued at Washington, DC on September 5, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-23232 Filed 9-8-00; 8:45 am]

BILLING CODE 6405-01-P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Advisory Committee on Appliance Energy Efficiency Standards

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Energy Conservation Program for Consumer Products: Advisory Committee on Appliance Energy Efficiency Standards. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the Federal Register.

**DATE AND TIME:** October 24, 2000, 9 a.m.-4:30 p.m.

**ADDRESSES:** U.S. Dept. of Energy, 1000 Independence Avenue, SW., Room 1E-245, Washington, DC 20585-0121.

**FOR FURTHER INFORMATION CONTACT:** Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-41, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-2945.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Meeting:** The Charter of the Advisory Committee has been renewed for two years to December 2000. This is the fourth meeting of the Committee since the charter was renewed. The Committee will review and deliberate on DOE's activities regarding appliance energy efficiency standards and provide comments and recommendations to the Department.

#### Tentative Agenda

1. Introductions, Agenda Review (9:00 a.m.)
2. Chairman's Opening Remarks
3. Update members on DOE rulemaking: schedule, priorities, and plans for FY 2001
4. Secretary's response to the Committee's consumer and electronic database recommendations
5. Discuss: should DOE consider setting standards for products beyond those listed by Congress
6. Discuss: is DOE using the correct performance standard descriptors—should standby power be considered—how should the parasitic power issue be considered
7. Discuss fuel neutrality: how should DOE consider this in revising established standards, and what analysis is most appropriate
8. Discuss harmonization of DOE and international test procedures and standards
9. Discuss alternative approaches for determining manufacturing cost-efficiency curves data
10. Action Items
11. Chairman's Closing Remarks
12. Adjourn (4:30 p.m.)

Please note that this draft agenda is preliminary. The times and agenda items listed are guidelines and are subject to change. A final agenda will be available at the meeting on Tuesday, October 24, 2000.

**Consumer Issues:** The Department is interested in addressing consumer issues in its rulemakings. If you have any issues which you would like to be addressed by the Committee, please contact Ms. Brenda Edwards-Jones at the address and phone number listed in the beginning of this notice.

**Public Participation:** The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so with before or after the meeting. Please provide ten copies of your statement. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda Edwards-Jones at (202) 586-2945. You must make your request for an oral statement at least seven days

before the meeting. Presentations will be limited to five minutes. We will try to include the statement in the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business.

**Minutes:** We will make the transcript of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-3142, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 5, 2000.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-23233 Filed 9-8-00; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-64-000]

#### Dominion Transmission, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Dominion Transmission<sup>1</sup> Capstone Project

September 5, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Dominion Transmission, Inc. (Dominion) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of: (1) Approximately 13 miles of 30-inch-diameter pipeline loop (the TL474X2 pipeline) and 800 feet of 30-inch-diameter connector pipeline in Armstrong County, Pennsylvania; (2) an upgrade of the Punxsutawney Compressor Station in Jefferson County, Pennsylvania, installing a 5,000 horsepower (hp) compressor engine; (3) an upgrade of the Ardell Compressor Station in Elk County, Pennsylvania,

replacing a 12,600 hp engine with a 15,000 hp engine; (4) installing a new 6,400 hp Compression Station next to the existing Greenlick Relay Station in Potter County, Pennsylvania; (5) installing a new 7,000 hp Brookman Corners Compressor Station in Montgomery County, New York; and (6) abandoning approximately 13 miles (11.4 miles in-place and 9,600 feet by removal) of the 12-inch-diameter LN-9 Pipeline in Armstrong County, Pennsylvania.

The purpose of the proposed project would be to replace with its own facilities, capability currently provided to Dominion by Tennessee Gas Pipeline Company (Tennessee). This would allow Dominion to continue to guarantee service to current customers at the same level. Dominion anticipates termination of its contract with Tennessee allowing throughput on Tennessee's system. The proposal does not include provision for adding service or customers.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208-1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas 2, PJ11.2.
- Reference Docket No. CP00-64-000; and
- Mail your comments so that they will be received in Washington, DC on or before October 6, 2000.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules and Practice and Procedures (18 CFR 385.214). Only intervenors have the

right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208-1088 or on the FERC Internet website ([www.ferc.fed.us](http://www.ferc.fed.us)) using the "RIMS" link in this docket number. Click on the "RIMS" link, select "Docket#" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket#" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-23214 Filed 9-8-00; 8:45 am]

**BILLING CODE 6717-01-M**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6867-3]

### Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC) Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the GMP CAC.

**DATES:** The CAC meeting will be held on Tuesday, October 3, 2000, from 1 p.m. to 5:30 p.m. and on Wednesday, October 4, 2000, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held in the Capitol Facilities Conference Room, Second Floor, at the Mississippi Department of Marine Resources, 1141 Bayview Avenue, Biloxi, Mississippi 39530, (228) 374-5022, ext. 5249.

**FOR FURTHER INFORMATION CONTACT:** Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office,

Building 1103, Room 202, Stennis Space Center, MS 39529-6000 at (228) 688-2421.

**SUPPLEMENTARY INFORMATION:** Proposed agenda items will include: Election of Officers; Discussions of CAC Activities and Measures of Success; GMP FY 2001 Projects Report and Workplan Update; and CAC New Members' Handbook presentation. The meeting is open to the public.

Dated: August 29, 2000.

**Gloria D. Car,**

*Designated Federal Officer.*

[FR Doc. 00-23241 Filed 9-8-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6867-4]

### Gulf of Mexico Program (GMP) Management Committee Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Management Committee.

**DATES:** The Management Committee Meeting will be held on Thursday, October 5, 2000, from 10 a.m. to 5:30 p.m. and on Friday, October 6, 2000, from 8 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held in the Main Auditorium (Commission Room) at the Mississippi Department of Marine Resources, 1141 Bayview Avenue, Biloxi, Mississippi 39530, (228) 374-5022, ext. 5249.

**FOR FURTHER INFORMATION CONTACT:** Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529-6000 at (228) 688-2421.

**SUPPLEMENTARY INFORMATION:** Agenda items will include: GMP Workplan Status—FY 2000 Accomplishments and Annual Performance Goals and Key Milestones for FY 2001; Public Health—FY 2001 Milestones; FY2001 State Meeting Results; Coordinated Out-year Federal Budget Development; GMP/Gulf of Mexico Regional Panel Workplan Implementation; GMP/Coastal America Regional Implementation Team; Communications Committee Report; Citizens Advisory Committee Report; Results of The Nature Conservancy (TNC)—Northern Gulf of Mexico Ecoregion Initiative; Discussions of TNC

Request for Formal Membership on the GMP-MC; Status Report on Louisiana Marsh Die-Off; Presentation of the Northern Gulf Littoral Initiative; Follow-up to Mercury Contamination Report; Initiate Planning for the GMP 2003 Symposium.

The meeting is open to the public.

Dated: August 29, 2000.

**Gloria D. Car,**

*Designated Federal Officer.*

[FR Doc. 00-23242 Filed 9-8-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6867-8]

### Notice of Seventh Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; announcement meeting.

**SUMMARY:** This notice announces the Seventh Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The Task Force, which includes Federal, State, and Tribal members, is promoting efforts throughout the Mississippi River Basin to reduce the frequency, duration, and size of the hypoxic zone in the Northern Gulf of Mexico. The major purpose of this meeting is to consider the comments received on the draft Action Plan, published in the **Federal Register** on July 11, 2000 (65 FR 42690) and the implications for the final Plan. This Action Plan is required by section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act (Public Law 105-383—Coast Guard Authorization Act of 1998). The public will be afforded an opportunity to provide input to the Task Force during open discussion periods. The room accommodates approximately 125 people. Those who plan to make a statement are asked to indicate their intention to Dr. Belefski (Contact Information below).

**DATES:** The meeting will be held at 8 a.m.–5 p.m., October 11, 2000.

**ADDRESSES:** The meeting will be held at the Baton Rouge Hilton Hotel, 5500 Hilton Avenue, Baton Rouge, LA; 1 (800) 445-8667 or (225) 924-5000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503F, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202)-260-7061; Internet:

belefski.mary@epa.gov. For additional information on hotel accommodations contact Marquetta Davis, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, Virginia 22030, telephone: (703) 385-6000; Internet: davisma@tetratetech.com

Dated: September 1, 2000.

**David G. Davis,**

*Acting Director, Office of Wetlands, Oceans, and Watersheds.*

[FR Doc. 00-23240 Filed 9-8-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6868-3]

### National Environmental Justice Advisory Council's (NEJAC) Puerto Rico Subcommittee; Notification of First NEJAC Puerto Rico Subcommittee Meeting, Open Meeting and Public Comment Period (All Times Are Local Puerto Rico Time)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency Region II will sponsor a National Environmental Justice Advisory Council (NEJAC) Puerto Rico Subcommittee Meeting on Environmental Justice, September 26–27, 2000, in Manat, Puerto Rico. Specifically, the meeting and public comment period will be held at Collage, located in Highway #2 Km. 49.2 in Manat. Meeting activities will include speaker presentations and a public comment period pertaining to environmental justice issues on the island. The meeting will start with a presentation from the EPA Region II Administrator. During the meeting there will also be presentations from the Director of the EPA Region II Caribbean Environmental Protection Division and the members of the new Puerto Rico Subcommittee. On September 26, the first day of the meeting, there will be a public comment period from 6:30 p.m. to 8:30 p.m. A broad range of stakeholders and constituent groups from all of Puerto Rico are invited to participate to help develop a framework and general recommendations to address environmental justice issues on the island of Puerto Rico. On September 27, the second day of the meeting, the agenda includes a discussion of follow-up and next steps. A report and recommendations from the Meeting Proceedings will be prepared by the Puerto Rico Subcommittee and

submitted to NEJAC for review and consideration before forwarding them to the Administrator of the U.S. EPA.

Members of the public who wish to make a brief oral presentation should pre-register by contacting Rafael Mayoral at (787) 729-6951 extension 251 by September 19, 2000 to have time reserved on the agenda. Individuals or groups making oral presentations will be limited to a total time of five minutes. Written comments of no more than 10 pages should be received by September 19, 2000. Send your written comments to: Tere Rodriguez, Designated Federal Official (DFO) of the Puerto Rico Subcommittee, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, San Juan, PR 00907-4127. After September 19, you should hand deliver 25 copies of your written comments to the DFO at the meeting. For more information please call (787) 729-6951 extension 266.

Dated: September 6, 2000.

**Tere Rodriguez,**

*Designated Federal Official, Puerto Rico Subcommittee.*

[FR Doc. 00-23349 Filed 9-8-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-30499; FRL-6737-5]

### Pesticide Product; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket control number OPP-30499, must be received on or before October 11, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-30499 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Action Leader at the mailing address listed in the table below:

Regulatory Action Leader	Telephone number/e-mail address	Mailing address	File symbol
Andrew Bryceland	(703) 305-6928; bryceland.andrew@epa.gov	Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460	72757-R
Richard King	(703) 305-8052; king.richard@epa.gov	Do.	69295-R and 72992-R

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311  32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental

Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-30499. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

###### C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-30499 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB),

Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov), or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-30499. Electronic comments may also be filed online at many Federal Depository Libraries.

###### D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

### *Products Containing Active Ingredients Not Included in Any Previously Registered Products*

1. File Symbol: 72757-R. Applicant: Ironwood Clay Company, Inc., c/o Plant Sciences Inc., 342 Green Valley Road, Watsonville, CA 95076-1305. Product Name: MinerALL. New Active Ingredient: Oceanic Clay. The proposed product is a new active ingredient that has not been previously registered. Proposed classification: None. To use as a crop-protectant and growth stimulator on vegetables, fruits, nuts, and ornamentals.

2. File Symbol: 69295-R. Applicant: Milwaukee Metro Sewage District, 260 W. Seeboth St., Milwaukee, WI 53204. Product Name: Milorganite Plus. Type of product: Biochemical. Active ingredient: Heat-dried activated sewage sludge at 100%. Proposed classification/Use: Deer repellent.

3. File Symbol: 72992-R. Applicant: Pokon and Chrystal B.V., Gooimeer 7, 1411 DD NAARDEN, The Netherlands (U.S. Agent James Kaplan, Pokon and Chrystal, 3063 NW, 21st St., Miami, FL

33172. Product Name: Chrystal AVB. Type of product: Biochemical pesticide. Active ingredient: Silver nitrate at 2.83%. Proposed classification/Use: Conditioner for ethylene sensitive cut flowers.

### List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 29, 2000.

**Kathleen Knox,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 00-23244 Filed 9-8-00; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-30460B; FRL-6740-4]

### Pesticide Product; Registration Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of applications to register the pesticide products Clodinafop-propargyl Technical and Discover™ Herbicide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-305-6224; and e-mail address: miller.joanne@epa.gov.

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311	Crop production Animal production Food manufac-turing

Cat-egories	NAICS	Examples of Potentially Affected Entities
	32532	Pesticide manu-facturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at <http://www.epa.gov/pesticides/>, and select "fact sheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP-30460B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is

available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

## II. Did EPA Approve the Applications?

The Agency approved the applications after considering all required data on risks associated with the proposed use of clodinafop-propargyl, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of clodinafop-propargyl when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

## III. Approved Applications

EPA issued a notice published in the **Federal Register** of September 25, 1998 (63 FR 51351) (FRL-6031-6) which announced that Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 had submitted an application to register the pesticide products: (1) Clodinafop-propargyl Technical, EPA file symbol 100-ONO for formulation only into herbicides for weed control in certain crops and (2) Clodinafop-2E Herbicide, EPA File Symbol 100-ONT for use in wheat to control wild oats, green and yellow

foxtail, and Persian darnel. These products were not previously registered.

The applications submitted by Novartis Crop Protection, Inc., were approved on June 6, 2000, for the products listed below:

1. EPA Registration Number: 100-907.

Product name: Discover™ Herbicide.

Active ingredient: Clodinafop-propargyl: propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-2-propynyl ester, (2R)- at 22.3%. For use on spring wheat to control grass weeds.

2. EPA Registration Number: 100-909.

Product name: Clodinafop-propargyl Technical.

Active ingredient: Clodinafop-propargyl: propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-2-propynyl ester, (2R)- at 97.5%. For formulation of herbicides for use on spring wheat.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 30, 2000.

**James Jones**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 00-23246 Filed 9-8-00; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6867-5]

### Notice of First Amendment to Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement agreement concerning the Old City of York Landfill Superfund Site, Springfield Township, York County, Pennsylvania (Proposed Settlement). The Proposed Settlement with the City of York, Pennsylvania (Settling Party) has been approved by the Attorney General, or her designee, of the United States Department of Justice. The Proposed Settlement was signed by

the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region III, on June 19, 2000, pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622, and is subject to review by the public pursuant to this notice.

The Proposed Settlement resolves EPA's claim for past response costs under Section 107 of CERCLA, 42 U.S.C. 9607, against the Settling Party and requires the Settling Party to make a payment of EPA's past response costs totaling \$105,000.00 in exchange for a limited covenant for past response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Settlement. EPA will consider all comments received and may withdraw or withhold consent to the Proposed Settlement if such comments disclose facts or considerations which indicate the Proposed Settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

**DATES:** Comments must be submitted on or before October 11, 2000.

**Availability:** The proposed settlement agreement is available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed settlement agreement may be obtained from, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814-2489. Comments should reference the "Old City of York Landfill Superfund Site" and "EPA Docket No. III-92-37-DC" and should be forwarded to Suzanne Canning at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ami Y. Antoine (3RC43), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814-2497.

Dated: August 24, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00-23238 Filed 9-8-00; 8:45 am]

**BILLING CODE 6560-50-M**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank).

**SUMMARY:** The Advisory Committee was established by Public Law 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

**Time and Place:** Wednesday, September 20, 2000, at 9:30 AM to 12:30 PM. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

**Agenda:** This meeting will include a follow-up discussion of the Institute of International Economics study titled "The Future of the U.S. Ex-Im Bank", and a discussion of Ex-Im Bank's e-commerce initiatives, and other matters.

**Public Participation:** The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 13, 2000, Teri Stumpf, Room 1215, 811 Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565-3502 or TDD (202) 565-3377.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Teri Stumpf, Room 1215, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565-3502.

John M. Niehuss,  
General Counsel.

[FR Doc. 00-23165 Filed 9-8-00; 8:45 am]

BILLING CODE 6690-01-M

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 5, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Wintrust Financial Corporation*, Lake Forest, Illinois; to acquire 100 percent of the voting shares of Northbrook Bank and Trust Company (in formation), Northbrook, Illinois.

Board of Governors of the Federal Reserve System, September 5, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-23159 Filed 9-8-00; 8:45 am]

BILLING CODE 6210-01-P

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of June 27 and 28, 2000

In accordance with § 71.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 27 and 28, 2000.<sup>1</sup>

The Federal Open Market Committee seeks monetary and financial conditions

that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 6½ percent.

By order of the Federal Open Market Committee, September 5, 2000.

**Donald L. Kohn,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 00-23213 Filed 9-8-00; 8:45 am]

BILLING CODE 6210-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*William A. Simmons, Ph.D., University of Texas Southwestern Medical Center:* Based on the report of an investigation conducted by the University of Texas Southwestern Medical Center (UTSW) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) finds that Dr. Simmons engaged in scientific misconduct by falsifying research supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH) grant R01 DK47692, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), NIH, grants R01 AR38319 and P01 AR09989, National Institute of Allergy and Infectious Diseases (NIAID), NIH, grant R01 AI42860, and National Cancer Institute (NCI), NIH, grant T32 CA09082.

Specifically, while a graduate student and postdoctoral fellow at UTSW, Dr. Simmons manipulated results of cytotoxic T-lymphocyte (CTL) assays by adding predetermined amounts of radioactivity to scintillation counting vials rather than carrying out the assays as claimed.

As a result of falsifying these assays over a minimum of five years, none of Dr. Simmons research can be considered reliable and the publications identified below have been, or soon will be, retracted or corrected. The falsified research also was reported in the 1 R01 AI42860-01 grant application, "A new

<sup>1</sup> Copies of the Minutes of the Federal Open Market Committee meeting of June 27 and 28, 2000, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

MHC locus influencing class I peptide display." Additionally, Dr. Simmons was responsible for falsifying Figure 3 published in *J. Immunol.* 159:2750–2759, 1997, by substituting preparations of chemically synthesized oligopeptide for natural peptides obtained from T cells isolated from B27 transgenic rats. These actions adversely and materially affected the laboratory's ongoing research into the role that human histocompatibility leukocyte antigens play in the development of disease.

The publications affected are:

- Simmons, W.A., Summerfield, S.G., Roopenian, D.C., Slaughter, C.A., Suberi, A.R., Gaskell, S.J., Bordoli, R.S., Hoyes, J., Moomaw, C.R., Colbert, R.A., Leong, L.Y., Butcher, C.W., Hammer, R.E., & Taurog, J.D. "Novel HY peptide antigens presented by HLA-B27." *J. Immunol.* 159:2750–2759, 1997 (being retracted).

- Simmons, W.A., Leong, L.Y., Satumtira, N., Butcher, G.W., Howard, J.C., Richardson, J.A., Slaughter, C.A., Hammer, R.F., & Taurog, J.D. "Rat MHC-linked peptide transporter alleles strongly influence peptide binding by HLA-B27 but not B27-associated inflammatory disease." *J. Immunol.* 156:1661–1667, 1996 (being retracted).

- Simmons, W.A., Roopenian, D.C., Summerfield, S.G., Jones, R.C., Galocha, B., Christianson, G.J., Maika, S.D., Zhou, M., Gaskell, S.J., Bordoli, R.S., Ploegh, H.L., Slaughter, C.A., Lindahl, K.F., Hammer, R.E., & Taurog, J.D. "A new MHC locus that influences class I peptide presentation." *Immunity* 7:641–651, 1997 (retracted).

- Simmons, W.A., Taurog, J.D., Hammer, R.E., & Breban, M. "Sharing of an HLA-B27-restricted H-Y antigen between rat and mouse." *Immunogenetics* 38:351–358, 1993 (retracted).

- Zhou, M., Sayad, A., Simmons, W.A., Jones, R.C., Maika, S.D., Satumtira, N., Dorris, M.L., Gaskell, S.J., Bordoli, R.S., Sartor, R.B., Slaughter, C.A., Richardson, J.A., Hammer, R.F., & Taurog, J.D. "The specificity of peptides bound to human histocompatibility leukocyte antigen (HLA)-B27 influences the prevalence of arthritis in HLA-B27 transgenic rats." *J. Exp. Med.* 188:877–886, 1998 (published erratum).

Dr. Simmons has accepted the PHS findings and has entered into a Voluntary Exclusion Agreement with PHS in which he has voluntarily agreed for a period of five (5) years, beginning on August 22, 2000:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g.,

grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations);

(2) to exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

#### FOR FURTHER INFORMATION CONTACT:

Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

**Chris Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 00–23215 Filed 9–8–00; 8:45 am]

BILLING CODE 4160–17–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

#### Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Director, AHRQ, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Developing Tools to Enhance Quality and Patient Safety Through Informatics". The RFP was published in the Commerce Business Daily on June 29, 2000.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

*Name of TRC:* The Agency for Healthcare Research and Quality—"Developing Tools to Enhance Quality

and Patient Safety Through Informatics".

*Date:* September 11, 2000 (Closed to the public).

*Place:* Gaithersburg Residence Inn, 9721 Washington Blvd., Gaithersburg Maryland, 20878.

*Contact Person:* Anyone wishing to obtain information regarding this meeting should contact Bonnie Campbell, Office of Research Review, Education, and Policy, Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 400, Rockville, Maryland, 20852, 301–594–1846.

This notice is being published less than 15 days prior to the September 11th meeting due to the time constraints of reviews and funding cycles.

Dated: September 1, 2000.

**John M. Eisenberg,**

*Director.*

[FR Doc. 00–23193 Filed 9–08–00; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY–66–00]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

#### Proposed Project

Youth Risk Behavior Survey—(0920–0258)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). The proposed project is the 2001 national school-based Youth Risk Behavior Survey. The purpose of this request is to renew OMB clearance to continue an ongoing biennial survey among high school students attending regular public, private, and Catholic schools in grades 9–12. The survey assesses priority health risk behaviors related to the major preventable causes of mortality,

morbidity, and social problems among both youth and adults in the U.S. OMB clearance for the 1999 survey expired January 2000 (OMB No. 0920-0258, expiration 01/00). Data on the health risk behaviors of adolescents is the focus of approximately 40 national health objectives in Healthy People

2010. The Youth Risk Behavior Survey provides data to measure at least 10 of these health objectives and 3 of the 10 Leading Health Indicators. In addition, the Youth Risk Behavior Survey can identify racial and ethnic disparities in health risk behaviors. No other national source of data measures as many of the

2010 objectives that address behaviors of adolescents. The data also will have significant implications for policy and program development for school health programs nationwide. The annualized burden is 9,173 hours.

Respondents	Number of respondents	Number of responses per respondent	Burden per response (hours)
High school students .....	12,000	1	0.75
School administrators .....	345	1	0.50

Dated: September 5, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00-23203 Filed 9-8-00; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY-67-00]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

#### Proposed Project

2001 National Health Interview Survey, Basic Module (0920-0214)—Revision—The National Center for Health Statistics (NCHS)—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated “Health US” and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion

and Disease Prevention Objectives, “Healthy People 2000.”

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997 and are expected to be in the field until 2006. This clearance is for the fifth full year of data collection using the Basic Module on CAPI, and for implementation of the second “Periodic Module”, which include additional detail questions on conditions, access to care, disabilities, and health care utilization. The “Periodic Module” will repeat a similar survey conducted in 1992, and will help track many of the Healthy People 2010 objectives. This data collection, planned for January–December 2001, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The annualized burden is 48,600 hours.

Questionnaire (respondent)	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
Family Core (adult family member) .....	42,000	1	21/60
Adult Core (sample adult) .....	42,000	1	21/60
Child Core (adult family member) .....	18,000	1	15/60
Periodic Module (sample adult) .....	42,000	1	21/60
All households .....	42,000	1	1 10/60

Dated: September 5, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy,  
Planning, and Evaluation, Centers for Disease  
Control and Prevention (CDC).*

[FR Doc. 00-23204 Filed 9-8-00; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00F-1487]

#### **Alcide Corp.; Filing of Food Additive Petition**

**AGENCY:** Food and Drug Administration,  
HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions as a component of a post-chill carcass spray or dip when applied to poultry meat, organs, or related parts or trim.

**DATES:** Submit written comments on the petitioner's environmental assessment by October 11, 2000.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3074.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4-722) has been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposes to amend the food additive regulations in § 173.325 *Acidified sodium chlorite solutions* (21 CFR 173.325) to provide for the safe use of acidified sodium chlorite solutions as a component of a post-chill carcass spray or dip when applied to poultry meat, organs, or related parts or trim.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the

subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may submit to the Dockets Management Branch written comments by October 11, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 23, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval Center  
for Food Safety and Applied Nutrition.*

[FR Doc. 00-23161 Filed 9-8-00; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00F-1488]

#### **Alcide Corp.; Filing of Food Additive Petition**

**AGENCY:** Food and Drug Administration,  
HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on processed, comminuted, or formed meat products prior to packaging.

**DATES:** Submit written comments on the petitioner's environmental assessment by October 11, 2000.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3074.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4724) has been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposes to amend the food additive regulations in § 173.325 *Acidified sodium chlorite solutions* (21 CFR 173.325) to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on processed, comminuted, or formed meat products prior to packaging.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may submit to the Dockets Management Branch written comments by October 11, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 24, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval Center  
for Food Safety and Applied Nutrition.*

[FR Doc. 00-23162 Filed 9-8-00; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Food Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Food Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 26, 2000, 8:30 a.m. to 5 p.m. and September 27, 2000, 8:30 a.m. to 2 p.m.

*Location:* Hilton Towers (Ballston Metro Stop), Gallery I and II, 950 North Stafford St., Arlington, VA.

*Contact Person:* Catherine M. DeRoeve, Center for Food Safety and Applied Nutrition (HFS-6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4251, FAX 202-205-4970, or e-mail: cderoeve@cfsan.fda.gov., or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On September 26 and 27, 2000, the committee will meet to discuss existing information and needs with respect to probiotics.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee (such as the use of probiotics in foods, probiotics and the immune system, probiotics and infants, etc). Written submissions may be made to the contact person by September 20, 2000. Oral presentations from the public will be scheduled between approximately 3:30 p.m. and 4:30 p.m. on September 26, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 20, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 29, 2000.

**Linda A. Suydam,**  
*Senior Associate Commissioner.*

[FR Doc. 00-23163 Filed 9-8-00; 8:45 am]  
**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA-2540-96]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.:* HCFA-2540 (OMB 0938-0463); *Use:* Form HCFA-2540-96 is the form used by skilled nursing facilities participating in the Medicare program. This form reports the health care costs used to determine the amount of reimbursable costs for services rendered to Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Businesses or other for-profit; Not-for-profit institutions; *Number of Respondents:* 15,700; *Total Annual Responses:* 15,706; *Total Annual Hours:* 2,943,200.

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 29, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00-23221 Filed 9-8-00; 8:45 am]

**BILLING CODE 4120-03-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA-2552-96]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital and Health Care Complex Cost Report and

supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.*: HCFA-2552-96 (OMB 0938-0050); *Use*: Form HCFA-2552-96 is the form used by hospitals participating in the Medicare program. This form reports the health care costs used to determine the amount of reimbursable costs for services rendered to Medicare beneficiaries; *Frequency*: Annually; *Affected Public*: Businesses or other for-profit; not-for-profit institutions; *Number of Respondents*: 7,000; *Total Annual Responses*: 7,000; *Total Annual Hours*: 4,629,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 29, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00-23222 Filed 9-8-00; 8:45 am]

**BILLING CODE 4120-03-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA-3070]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any

of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Intermediate Care Facility for the Mentally Retarded or Persons with Related Conditions ICF/MR Survey Report Form (3070G-I) and Supporting Regulations at 42 CFR 431.52, 431.151, 435.1009, 440.150, 440.220, 442.1, 442.10-442.16, 442.30, 442.40, 442.42, 442.100-442.119, 483.400-483.480, 488.332, 488.400, and 498.3-498.5; *Form No.*: HCFA-3070 (0938-0062); *Use:* The survey forms are needed to ensure provider compliance. In order to participate in the Medicaid program as an ICF/MR, a providers must meet Federal standards. The survey report form is used to record providers' level of compliance with the individual standard and report it to the Federal government; *Frequency:* Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 6,763; *Total Annual Responses:* 6,763; *Total Annual Hours:* 20,289.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 29, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00-23223 Filed 9-8-00; 8:45 am]

**BILLING CODE 4120-03-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA-R-0294]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New; *Title of Information Collection:* Hospital Condition of Participation; Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data and Supporting Regulations at 42 CFR 482.45; *Form No.*: HCFA-R-0294 (OMB # 0938-NEW); *Use:* Hospitals must document that they have protocols for referral of organ, tissue, and eye donors and that they have contacted the organ procurement organization and (in some cases) the tissue bank and/or eye bank about every death or imminent death so that surveyors can verify that the hospital is in compliance with the Medicare/Medicaid conditions of participation for hospitals; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 6,100; *Total Annual Responses:* 1,491,700; *Total Annual Hours:* 146,070.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA

document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 29, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00-23224 Filed 9-8-00; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-3482-N-09]

### Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Notice of Transition Assistance

**AGENCY:** Office of the Secretary, HUD.  
**ACTION:** Notice of transition assistance.

**SUMMARY:** This notice describes the transition assistance that will be provided in connection with implementation of HUD's new requirements for notification, evaluation and reduction of lead-based paint hazards in federally owned residential property and housing receiving federal assistance ("Lead Safe Housing Regulation"). The Lead Safe Housing Regulation was published in the **Federal Register** on September 15, 1999, and becomes effective on September 15, 2000. To make certain that adequate service providers exist throughout the country to carry out lead-based paint hazard evaluation and reduction activities safely and effectively, and to target available resources to housing which places children most at risk, HUD has developed a transition assistance policy with three components.

First, HUD is authorizing a six-month transition period for program participants in jurisdictions which notify the Department by November 15, 2000, that they lack the capacity to implement one or more provisions of the Lead Safe Housing Regulation. Second, post-1960 properties occupied by children under six receiving only

tenant-based rental assistance will be provided a twelve month transition period. Third, properties receiving federal rehabilitation assistance greater than \$25,000 that are occupied by the elderly, where no child under six resides or is expected to reside, will be provided a twelve month transition period. No submission by a jurisdiction is required in order for program participants to take advantage of the second and third transition assistance components. All three components are discussed in more detail in the **SUPPLEMENTARY INFORMATION** section of this notice.

#### FOR FURTHER INFORMATION CONTACT:

Lead Paint Compliance Assistance Center, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW, Room P-3206, Washington, DC 20410-0500, 1-866-HUD-1012 (1-866-483-1012) (this is a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

Congress mandated the reduction of lead-based paint hazards in federally owned residential property and housing receiving federal assistance in the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992) (Pub. L. 101-550; 106 Stat. 3897; 42 U.S.C. 4851 *et seq.*), which amended the Lead-Based Paint Poisoning Prevention Act (Pub. L. 91-695; 84 Stat. 2078; 42 U.S.C. 4801 *et seq.*). HUD published the Lead Safe Housing Regulation implementing Sections 1012 and 1013 of Title X in the **Federal Register** at 64 FR 50140 on September 15, 1999. This regulation becomes effective on September 15, 2000.

The Lead Safe Housing Regulation applies advances in the scientific understanding of childhood lead poisoning in the rehabilitation, treatment and maintenance of federally owned residential property and housing receiving federal assistance under a wide array of programs. The regulation also increases the quantity of testing, home maintenance, repair or rehabilitation work that must be performed in a lead-safe manner. In most areas of the country, the Department believes there is an adequate supply of trained contractors and licensed (certified) personnel to do the work required. However, in certain

areas, the market for the services required under the regulation may not yet have reached the point where the requisite expertise is reasonably available for all programs and all requirements of the regulation.

Recognizing that gaps in capacity may exist, the Department believes that to protect children from lead poisoning in federally owned residential property and housing receiving federal assistance, the Lead Safe Housing Regulation must become effective as scheduled on September 15, 2000. Under this notice, the Department is providing program participants with a short transition period during which the geographic areas lacking capacity to comply with the Lead Safe Housing Regulation can build that capacity and resources can be focused on the housing stock with the greatest need. During this transition period, program participants in jurisdictions qualifying for the transition assistance will not be expected to comply with the relevant requirements of the Lead Safe Housing Regulation for certain identified programs. Working in partnership with organizations of housing providers and childhood health advocates, HUD will provide funds for nationwide training of clearance technicians, maintenance workers, rehabilitation workers, program staff and others. HUD will also create a Lead Paint Compliance Assistance Center to respond to requests for training assistance from jurisdictions which have inadequate capacity. The Department will provide funds to defray the costs of testing for lead-based paint and lead-based paint hazards, including clearance testing and risk assessments in the housing choice voucher program, clearance testing for properties receiving federal rehabilitation assistance and inspections and risk assessments for HUD's project-based programs. HUD is issuing program specific administrative notices to all program participants describing the sources of funding available for lead-based paint inspections and other testing, and related training.

#### Transition Assistance

##### *Component 1—Assistance for Jurisdictions With Inadequate Capacity*

For program participants in a particular jurisdiction to qualify for transition assistance based on inadequate capacity to carry out specific requirements of the Lead Safety Regulation, the chief elected official of the jurisdiction, or a senior official designated to act on his or her behalf (such as the official who signs the Annual Consolidated Action Plan

submitted to HUD for the jurisdiction), must submit a Statement of Inadequate Capacity to HUD. A jurisdiction is defined for purposes of this notice as a CDBG Entitlement Grantee or for non-entitlement areas, the State CDBG Grantee or Indian Tribe. If the jurisdiction is the State, the statement must be signed and submitted by the agency head who signs the State Annual Consolidated Action Plan submitted to HUD and by the agency head responsible for the EPA-authorized lead-based paint certification program (if the State has an EPA-authorized lead-based paint certification program). If the jurisdiction is an Indian Tribe, the statement must be signed and submitted by the chief official of the Indian Tribe and by the individual responsible for the EPA-authorized lead-based paint certification program (if the Indian Tribe has an EPA-authorized lead-based paint certification program). The statement submitted by a State may cover all or part of the CDBG non-entitlement area of the State. The Statement of Inadequate Capacity should be circulated to and reviewed by local officials with responsibility for housing and public or environmental health in the State or locality.

The Statement of Inadequate Capacity must be submitted to: David E. Jacobs, Deputy Director, Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, Room P-3202, 451 7th Street, SW, Washington, DC 20410-0500.

Specifically, the jurisdiction must indicate in the Statement of Inadequate Capacity that trained, licensed (certified) or accredited personnel or firms are either not available in sufficient numbers or are not available at a reasonable cost to make it practicable to comply with the Lead Safe Housing Regulation between September 15, 2000, and March 15, 2001. The statement must indicate the specific requirements, as well as the particular programs or types of assistance covered by the Lead Safety regulation for which capacity to comply does not yet exist. If the jurisdiction's claim of inadequate capacity is based on unreasonable cost, the statement must be documented by an analysis of actual bids. A sample Statement of Inadequate Capacity which HUD recommends jurisdictions use will be available on the HUD lead website at [www.hud.gov/lea](http://www.hud.gov/lea).

This Statement of Inadequate Capacity from a jurisdiction must be received by HUD no later than November 15, 2000. At the same time the statement is submitted to HUD, a copy of this statement must also be

submitted to the State agency responsible for the lead-based paint certification program or to the regional EPA office if EPA is operating the lead-based paint certification program directly.

The jurisdiction is required to submit a Transition Implementation Plan with its Statement of Inadequate Capacity no later than December 15, 2000, explaining how the jurisdiction will take the necessary steps to ensure that an adequate supply of personnel or contractors will be available by March 15, 2001. Failure to submit the plan by December 15, 2000, will result in the rescission of the transition assistance.

The plan must include the following: (1) An assessment of actual existing capacity and the additional number and type of personnel that need to be trained and/or certified; (2) how training will be obtained; (3) how assisted housing with the greatest risks and greatest opportunity to control lead-based paint hazards will be prioritized using existing personnel or contractors; (4) how coordination with the State agency responsible for certification of lead hazard control personnel will be achieved; and (5) a schedule of activities that will enable the jurisdiction to obtain compliance as rapidly as possible, but no later than March 15, 2001. Jurisdictions must agree to make the Transition Implementation Plan publicly available. Transition Implementation Plan Guidance will be available on the HUD lead website at [www.hud.gov/lea](http://www.hud.gov/lea).

If the Statement of Inadequate Capacity from a jurisdiction meets all of the requirements set out in this notice, the Department will conclude that program participants in the jurisdiction lack the capacity to undertake safely and responsibly the evaluation and reduction of lead-based paint and lead-based paint hazards under the Lead Safe Housing Regulation and that transition assistance is needed to build capacity. The Department will publish in the **Federal Register** and make available on the HUD lead website at [www.hud.gov/lea](http://www.hud.gov/lea) a list of the jurisdictions that have applied for transition assistance. HUD will conduct periodic audits of these Statements of Inadequate Capacity and may rescind transition assistance based on a false statement of inadequate capacity.

Jurisdictions that lack capacity will not be required to comply with the affected requirements of the Lead Safe Housing Regulation during a transition period beginning on September 15, 2000 and ending on March 15, 2001. During this transition period, program participants will continue to comply

with HUD's lead-based paint regulations that were effective before September 15, 2000. If there remains a lack of capacity of trained or licensed (certified) professionals to conduct activities under the Lead Safe Housing Regulation at the end of the transition period, the jurisdiction must provide for HUD approval supplemental documentation in the form of an updated Transition Implementation Plan to justify an extension of the transition period consistent with their Annual Consolidated Action Plan schedule.

*Component 2—Phase In Period for Post-1960 Properties Receiving Tenant-Based Assistance.*

HUD will provide a one year transition period—until September 15, 2001—for all properties built after 1960 receiving only tenant-based assistance that are occupied by a child under six. During this transition period, program participants will continue to comply with HUD's lead-based paint regulations that were effective for this program before September 15, 2000. To receive this transition assistance, no submission by a jurisdiction is required.

*Component 3—Phase In Period for Elderly-Occupied Properties Receiving Federal Rehabilitation Assistance Greater Than \$25,000.*

HUD will provide a one year transition period—until September 15, 2001—for all properties receiving federal rehabilitation assistance greater than \$25,000 that are occupied by the elderly, where no child resides or is expected to reside. During the transition period, program participants will comply with the requirements in the Lead Safe Housing Regulation for federal rehabilitation assistance between \$5,000 and \$25,000. To receive this transition assistance, no submission by a jurisdiction is required.

Dated: September 5, 2000.

**Andrew Cuomo,**  
Secretary.

[FR Doc. 00-23188 Filed 9-8-00; 8:45 am]

BILLING CODE 4210-32-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act if 1988

(IGRA), Public Law 100-497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact Between the Chitimacha Tribe of Louisiana and the State of Louisiana, which was executed on July 6, 2000. This Compact was approved in its entirety, with the exception of Section 12(C). Section 2(C) of the Compact makes it clear that if one provision of the Compact violates IGRA, federal law or our trust responsibility, and therefore is disapproved, the remainder of the Compact shall remain in effect.

**DATES:** This action is effective September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240.

Dated: August 24, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00-23229 Filed 9-8-00; 8:45 am]

**BILLING CODE 4310-02-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-06-00-2821-JL]

### Emergency Motor Vehicle Closure

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** A temporary closure to motor vehicle use on public lands within and adjacent to areas burned by the Henderson Draw, Statzer Point, Hemingway Draw, 33 Mile and Dead Horse Fires administered by the Bureau of Land Management, Casper Field Office.

**SUMMARY:** During the summer of 2000, these fires burned approximately 29,300 acres of public, state and, private land in Natrona County, Wyoming. About 13,700 acres of public land administered by the Bureau of Land Management were burned. The vehicle closure applies to public lands generally contained within the following descriptions:

Henderson Draw Fire:

T. 37 N., R. 76 W., Sections 4, 5, 6, 7, 8, 9 and 10.

T. 36 N., R. 77 W., Sections 1, 12 and 13.

T. 37 N., R. 76 W., Sections 9, 19, 20, 30 and 31.

T. 37 N., R. 77 W., Sections 24, 25 and 26.

Statzer Point Fire:

T. 37 N., R. 80 W., Sections 5, 7 and 8.

T. 38 N., R. 80 W., Section 32.

Hemingway Draw Fire:

T. 37 N., R. 81 W., Sections 17, 20, 21, 28 and 29.

33 Mile Fire:

T. 35 N., R. 80 W., Sections 4, 7 and 8.

T. 36 N., R. 80 W., Sections 29 and 33.

Dead Horse Fire:

T. 32 N., R. 80 W., Sections 18, 19, 20, 29, 30 and 32.

T. 32 N., R. 81 W., Sections 13, 24, 25, 26 and 27, all in the 6th Principal Meridian.

Because of the damage caused by the fire and fire-fighting activities, this closure is necessary to prevent erosion, to prevent the creation of new motor vehicle routes and to enhance fire rehabilitation efforts within and adjacent to the burned area. A map of the fire areas is available at the Casper Field Office.

### Prohibited Act

Pursuant to 43 CFR 8364.1, motorized vehicle use is prohibited on public land administered by the Bureau of Land Management within and near the boundary of the fires. This includes all fire lines created by bulldozers and graders. Public access routes to and through the area will be signed as closed to motor vehicles.

### Penalties

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0-7 and 43 CFR 8364.1. Any person who knowingly and willfully violates this closure and is convicted may be fined no more than \$1,000 or imprisoned no more than 12 months, or both.

### Exceptions

This closure applies to all motorized vehicles excluding (1) any emergency or law enforcement vehicle while being used for emergency purposes; (2) any vehicle used for planning and implementing the rehabilitation plan for the fire area; and, (3) any vehicle whose use is expressly authorized in writing by the Field Manager, Casper Field Office.

**EFFECTIVE DATE:** This emergency closure is effective September 11, 2000, and will continue through November 30, 2000.

### FOR FURTHER INFORMATION, CONTACT:

James K. Murkin, Field Manager, Casper Field Office, Bureau of Land Management, 2987 Prospector Drive, Casper, WY 82604-2968. Telephone: 307-261-7600.

Dated: September 1, 2000.

**James K. Murkin,**

*Field Manager.*

[FR Doc. 00-23317 Filed 9-8-00; 8:45 am]

**BILLING CODE 4310-22-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Public Information Hearings on Planning for Jamestown 400th.

**AGENCY:** National Park Service (NPS), Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** NPS, working with the Association for the Preservation of Virginia Antiquities (APVA), is hosting two public information meetings to gather information regarding the planning for Jamestown's 400th anniversary in 2007. At Jamestown Virginia, Native Americans, Europeans and Africans came together to form the first permanent English colony in the New World and to begin to develop the society and government now known as the United States of America. The planning includes facilities, exhibits and interpretation as well as environmental compliance. The public information meetings will provide an opportunity for the interested public to provide input into our planning process.

**DATE:** October 3, 2000, from 1 pm-4 pm and 6 pm-9 pm Eastern Time.

**ADDRESS:** Jamestown Visitor Center, Theatre 1, Jamestown Island, Colonial National Historical Park.

**FOR FURTHER INFORMATION CONTACT:** For further information on the meetings or our approach to planning for the 400th anniversary of Jamestown, write to Heather Huyck, Jamestown 400th Project Director, c/o Colonial National Historical Park, Box 210, Yorktown VA 23690. You may call Ms. Jeannie Freeman (NPS) at 757-898-3400 or call Ms. Elizabeth Kostelny (APVA) at 804-648-1889. You may also send an email to jtplan@apva.org.

### Speaking at Public Meeting

Anyone who plans to speak at any of these meetings should write, call or email a request to speak to the address listed above. Include your name, affiliation, address, phone number and email address, approximately how much speaking time you desire, and which session you will attend. We will use this information to try to arrange enough time on the agenda for all comments. We will make every effort to accommodate your request but cannot guarantee that you will be given all the

time you request. Please send all requests to present oral comments at the public meeting by September 25, 2000.

### Providing Written Information

We are also interested in receiving any documents that support your oral information, or any other written information on the subject. These written materials may be mailed or emailed to the same address listed. Please submit your written material or documentation in an unbound format, no larger than 8½ x 11 inches, suitable for copying and electronic filing. Please include your name, affiliation, address and phone number. All information provided will become part of the public record. To avoid duplication of documents in the public record, please do not send the same information by paper copy and email. To assure we have time to review all written information before the October 3, 2000 meeting, please send all written information by September 16, 2000.

Dated: August 31, 2000.

**Heather Huyck,**

*Jamestown 400th Project Director.*

[FR Doc. 00-23220 Filed 9-8-00; 8:45 am]

BILLING CODE 4310-70-P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Submission for OMB Review; Comment Request

**AGENCY:** Overseas Private Investment Corporation, IDCA.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for Office of Management and Budget (OMB) review and approval and to request public review and comment on the submission. At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420-0026. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed information collection request under review is summarized below.

**DATES:** Comments must be received on or before November 13, 2000.

**ADDRESSES:** Copies of the survey questions and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

### FOR FURTHER INFORMATION CONTACT:

*OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527, telephone (202) 336-8563.

### Summary of Form Under Review

*Type of Request:* New information collection.

*Title:* OPIC Survey of Client Satisfaction.

*Form Number:* OPIC 232.

*Frequency of Use:* Once per client.

*Type of Respondents:* Individual business officer representative of business institutions.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. companies or citizens investing overseas.

*Reporting Hours:* 20 minutes per client.

*Number of Responses:* 126.

*Federal Cost:* \$8,820.

*Authority for Information Collection:* Executive Order 12862, Setting Customer Service Standards; President Clinton's Memorandum for Heads of Executive Departments and Agencies, Improving Customer Service (March 23, 1995).

*Abstract (Needs and Uses):* OPIC is surveying its clients to determine their satisfaction with its products and services. OPIC will use the survey results to ensure that strategies are in place to improve customer service, and to develop customer service standards and measure results against them.

Dated: September 5, 2000.

**Rumu Sarkar,**

*Assistant General Counsel, Department of Legal Affairs.*

[FR Doc. 00-23190 Filed 9-8-00; 8:45 am]

BILLING CODE 3210-01-M

## DEPARTMENT OF JUSTICE

### Civil Rights Division

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; Extension of a currently approved collection; entitled Complaint Form, Coordination and Review

Section, Civil Rights Division, Department of Justice.

The Department of Justice, Civil Rights Division, Coordination and Review Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until November 13, 2000.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, by calling (888) 848-5306 (Voice or TTY), or write her at U.S. Department of Justice, P.O. Box 66560, Washington, DC 20035-6560.

### Overview of This Collection

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Complaint Form, Coordination and Review Section, Civil Rights Division, Department of Justice.

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Coordination and Review Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral is necessary, and to provide information needed to initiate investigation of the complaint. Respondents are individuals alleging discrimination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,560 respondents per year at .5 hours per complaint form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 780 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue NW., Washington, DC 20530.

Dated: September 5, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 00-23189 Filed 9-8-00; 8:45 am]

**BILLING CODE 4410-13-M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

[INS No. 2085-00]

#### **Notice of Intent To Prepare a Draft Environmental Impact Statement for the Construction of a Detention Facility Within 15 Miles from Interstate 35 in Frio, La Salle, Medina, Atascosca or Webb Counties, TX**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

#### **SUMMARY:**

##### **Proposed Action**

The Immigration and Naturalization Service (INS) will prepare a Draft Environmental Impact Statement (DEIS) for evaluation of the environmental impacts of the construction of a Contractor-Owned Contractor-Operated (COCO) detention facility within 15 miles of Interstate 35 in Frio, La Salle, Medina, Atascosca or Webb Counties, Texas. The INS has a requirement to expand the total capacity in the area by 1,000 beds. The facility is needed near the Interstate 35 corridor area between

Laredo and San Antonio to house and care for illegal aliens detained by the INS for illegal entry into the United States. With regard to planned construction, the DEIS will include evaluations of water, sewage system, parking, supporting administrative spaces, gates, gate access, lighting, and surveillance components. The direct project impacts, as well as cumulative impacts of the project, will also be addressed in the DEIS. According to the Council on Environmental Quality's regulation 40 CFR 1508.22, a scoping process is required prior to preparing a DEIS. As part of the DEIS process, the INS will hold a public meeting in the San Antonio area. Interested parties will be invited to help identify significant environmentally related items for evaluation in the DEIS. Notices will be published in the Frio, La Salle, Medina, Atascosca, and Webb County local newspapers to provide the time, date, and location of the hearing.

#### **Alternatives**

The DEIS will include discussions of the alternative approaches to fulfilling the requirement for a detention facility in the area. This will include a review of potential construction sites. The No Action alternative (*i.e.*, cancellation of the proposed project) will also be reviewed.

#### **Scoping Process**

In developing the DEIS, interested parties and the public are invited to help decide the most significant issues to be examined. A scoping meeting will be held in the San Antonio, Texas area in the future. Notice of the meeting will be published in local newspapers prior to the meeting indicating the date, time, and location of the meeting.

#### **DEIS Preparation**

The identified significant and relevant scoping issues will be used to determine the environmental focus of the DEIS. Environmental experts will be used to prepare the analysis of the major environmental concerns in the DEIS. After completion, the DEIS will be made available for public review and comment prior to the preparation of the Final Environmental Impact Statement.

#### **FOR FURTHER INFORMATION CONTACT:**

Richard Diefenbeck, Director of Facilities and Engineering Division, 425 "I" Street, NW, Washington, DC 20536, telephone number (202) 514-3099.

Dated: September 1, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00-23228 Filed 9-8-00; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF JUSTICE

### National Institute of Justice

[OJP(NIJ)-1288]

#### **Notice of Availability of the Finding of No Significant Impact and the Environmental Assessment for NIJ's Crime Laboratory Improvement Program—DNA**

**AGENCY:** Office of Justice Programs, National Institute of Justice (NIJ), Justice.

**ACTION:** Notice of availability of FONSI and EA.

**SUMMARY:** The Environmental Assessment, which is available to the public, concludes that the DNA improvement funding of the Crime Laboratory Improvement Program will not have a significant impact on the quality of the human environment.

**FOR FURTHER INFORMATION CONTACT:** For copies of the Environmental Assessment, please contact: A. Trent DePersia, NIJ Environmental Coordinator, National Institute of Justice, 810 7th Street, N.W., Room 7252, Washington, DC 20531; Phone:(202) 305-4686; E-mail: depersia@ojp.usdoj.gov. Copies of the Environmental Assessment are also available on NIJ's Website at [www.ojp.usdoj.gov/nij/crimelabenviron.htm](http://www.ojp.usdoj.gov/nij/crimelabenviron.htm).

#### **SUPPLEMENTARY INFORMATION:**

##### **Program Description**

The National Institute of Justice (NIJ), 42 U.S.C. § 3722, as required by the Council on Environmental Quality's regulations, 40 CFR parts 1500 through 1508, has prepared an Environmental Assessment for the Crime Laboratory Improvement Program (CLIP)—DNA. The Purpose of CLIP is to provide equipment, supplies, and training to State and local crime laboratories to increase or expand their capabilities and capacities to perform various types of forensic analysis, such as biological evidence analysis (including DNA testing), trace evidence analysis, fingerprint comparison, toxicology, and firearm and tool mark analyses. This program responds to the criminal justice system's need for access to accurate and timely forensic laboratory services to

develop investigative leads and solve crimes. This phase of CLIP funding (CLIP—DNA) will be directed specifically to DNA laboratory improvements.

#### Environmental Assessment

NIJ will award grants to State and local crime laboratories through a competitive solicitation process. NIJ expects to award approximately 30 CLIP grants per year, dependent upon appropriations. The Environmental Assessment concludes that the funding of this program will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be prepared for the funding of this program.

Dated: September 5, 2000.

**Julie Samuels,**

*Acting Director, National Institute of Justice.*

[FR Doc. 00-23164 Filed 9-8-00; 8:45 am]

BILLING CODE 4410-18-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(C)(2)(a)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the *Domestic Agricultural In-Season Wage Report*, ETA-232 and *Wage Survey Interview Record*, ETA-232A. A Copy of the proposed

information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before November 13, 2000.

**ADDRESSES:** Grace A. Kilbane, Attention Dale Ziegler, Officer of Workforce Security, Employment Training Administration, U.S. Department of Labor, Room C-4318, 200 Constitution Avenue NW., Washington, DC 20210-0001, 202-693-3010, (this is not a toll-free number), fax: 202-693-2769.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Wagner-Peyser Act, as amended, provides that the Office of Workforce Security shall assist in coordinating the State public employment services throughout the country and in promoting uniformity in their administrative and statistical procedures, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system and maintaining a system for clearing labor between the States.

Pursuant to the Wagner Peyser Act, the U.S. Department of Labor has established regulations at 20 CFR 653.500 covering the processing of agricultural intrastate and interstate job orders. Section 653.501 provides that wages offered by employers must not be less than the prevailing wages or the applicable Federal or State minimum wage, whichever is higher. Also the regulations for the temporary employment of alien agricultural and logging workers in the United States, 20 CFR, Part 655, Subparts B and C, the H-2A program, under the Immigration Reform and Control Act of 1986, require farmers and other agricultural employers to pay workers the adverse effect wage rate, the prevailing wage rate, or the legal Federal or State minimum wage rate, whichever is highest.

The prevailing wage rate is used to implement these regulations covering intrastate and interstate recruitment of farmworkers. The vehicle for establishing the prevailing wage rate is Form ETA-232, The Domestic Agricultural In-Season Wage Report, and Form ETA-232A, Wage Survey

Interview Record. The ETA-232 report contains the prevailing wage finding based on survey data collected from employers and reported by the State on the ETA-232A.

##### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

##### III. Current Actions

Activity covered by regulations at 20 CFR 653.500 and 20 CFR 655(B)(C), particularly the H-2A program, continues to expand, further increasing the need for accurate and timely wage information on which to base prevailing agricultural wage determinations. There is no similar age information which is available or can be used for these determinations which apply to a specific crop or livestock activity, in a specific agricultural wage reporting area for a specific period of time during the peak harvest season.

*Type of Review:* Extension.

*Agency:* Employment and Training Administration.

*Title:* Domestic Agricultural In-Season Wage Report, ETA-232 and Wage Survey Interview Record, ETA-232A.

*OMB Number:* 1205-0017.

*Agency Numbers:* ETA-232 and ETA-232A.

*Affected Public:* Business and State Government.

*Total Burden Hours:* 16,301.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
ETA-232 .....	600	Annually .....	600	11 hours .....	6,600
ETA-232A .....	38,805	Annually .....	38,805	¼ hour .....	9,701

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
Total .....	.....	.....	39,405	.....	16,301

*Total Burden Cost (capital/startup):*  
—0—.

*Total Burden Cost (operating/maintaining):*

*Business:* The salary range of representatives of business respondents (employees of small family owned farms up through large agribusiness firms) could be from the minimum wage to several hundred thousand dollars of a CEO. Therefore, the hourly salaries of individuals participating in the wage survey can range from about \$5.15 to \$300.00 or more per hour.

*State Government:* Average cost to the State agencies conducting the agricultural wage surveys range from \$1,500.00 to \$6,000.00 per survey, depending upon the complexity of the crop or livestock activity to be surveyed, including considerations such as size of employer and worker universes, and geographic expanse of wage reporting areas.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 5, 2000.

**Grace A. Kilbane,**

*Administrator, Office of Workforce Security, Employment and Training Administration.*

[FR Doc. 00-23235 Filed 9-8-00; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-105)]

### NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

**DATES:** Monday, September 25, 2000, 5:30 p.m.-6:30 p.m. Central Daylight Time.

**ADDRESSES:** NASA Johnson Space Center, 2101 NASA Road 1, Building 1, Room 257A, Houston, TX 77058.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546-0001, 202/358-4461.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support permanent crew habitation and the American and Russian flight team's preparedness to accomplish the Expedition—1 mission.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: September 5, 2000.

**Beth M. McCormick,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00-23166 Filed 9-8-00; 8:45 am]

BILLING CODE 7510-01-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-106)]

### NASA Advisory Council, Aero-Space Technology Advisory Committee, Rotorcraft Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the Rotorcraft Subcommittee of the NASA Advisory Council Aerospace Technology Advisory Committee.

**DATES:** Thursday, October 19, 2000, 8 a.m. to 5 p.m.; Friday, October 20, 2000, 8 a.m. to 2 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Ames Research Center, Building 200, Committee Room, Moffett Field, CA 94035.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sue Zabor, National Aeronautics and

Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604-2890.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Status, Technical Accomplishments and Plans for the NASA Rotorcraft Research and Technology Base Program  
—Assessment of Rotorcraft Base Program Aerospace Technology Enterprise Milestones and Milestones Subject to Government Performance and Results Act  
—Strategic Vision for the Rotorcraft Community

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: September 6, 2000.

**Beth M. McCormick,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00-23230 Filed 9-8-00; 8:45 am]

BILLING CODE 7510-01-P

## NATIONAL COUNCIL ON DISABILITY

### International Watch Advisory Committee; Advisory Committee Meeting/Conference Call

**AGENCY:** National Council on Disability (NCD).

**SUMMARY:** This notice sets forth the schedule of the forthcoming meeting/conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92-463).

*International Watch:* The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

**DATES:** October 16, 2000, 12:00 p.m. EDT.

**FOR FURTHER INFORMATION CONTACT:** Kathleen A. Blank, Attorney/Program

Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004; 202-272-2004 (Voice); 202-272-2074 (TTY), 202-272-2022 (Fax), kblank@ncd.gov (e-mail).

**Agency Mission:** The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

**Open Meeting/Conference Call:** This advisory committee meeting/conference call of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on September 5, 2000.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 00-23160 Filed 9-8-00; 8:45 am]

**BILLING CODE 6820-MA-M**

## NUCLEAR REGULATORY COMMISSION

### Relocation of the Nuclear Regulatory Commission's Public Document Room

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Relocation of the Nuclear Regulatory Commission's Public Document Room.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is relocating its Public Document Room (PDR) to the NRC's headquarters building, One

White Flint North, located at 11555 Rockville Pike (first floor), Rockville, Maryland.

**DATES:** The move will be completed on September 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Smith, Office of the Chief Information Officer, Nuclear Regulatory Commission, telephone 301-415-7204, e-mail tes@nrc.gov.

**SUPPLEMENTARY INFORMATION:** The PDR will be closed on Friday and Monday, September 22 and 25, 2000, and will reopen on Tuesday, September 26, 2000. Please check the PDR's Web page at <<http://www.nrc.gov/NRC/PDR/pdr1.htm>> for the status of the move.

During the move, the public may access the ADAMS Public Electronic Reading Room at Web address <<http://www.nrc.gov/NRC/ADAMS/index.html>>. If there are any special projects that must be accomplished between September 22 and 25, 2000, contact the PDR staff before the move, at 202-634-3273 or 1-800-397-4209. Every effort will be made to accommodate these requests and minimize this temporary inconvenience.

Access to the Bibliographic Retrieval System (BRS) will be unavailable from September 21-25, 2000, and reference services, including document reproduction, will be suspended from September 22-25, 2000. After the PDR reopens, the normal level of service for document reproduction may be temporarily affected while the reproduction contractor completes the backlog of requests received by the NRC during the move. Paper copies of records that were once in the downtown PDR have now been archived and will be available for recall one day after requested. Microfiche documents will be available for viewing and copying at the new PDR location. Recent NRC documents will be available electronically in ADAMS.

The mailing address will remain the same: U.S. Nuclear Regulatory Commission, Public Document Room, Washington, D.C. 20555-0001.

The PDR's service hours at the new location will remain the same:

#### Hours

7:45 a.m.-4:15 p.m.—Reading Room

8:30 a.m.-4:15 p.m.—Telephone

Reference

Contact Numbers After The Move 1-800-397-4209 (toll free telephone) 301-415-4737 (local telephone number) (new)

301-415-3548 (fax number) (new)

1-800-270-2787 (BRS toll free number)

301-415-1841 (BRS local number) (new)

1-800-635-4512 (TDD toll free number)

#### E-Mail Address

pdr@nrc.gov (email)

Dated at Rockville, Maryland, this 5th day of September, 2000.

For the Nuclear Regulatory Commission.

**Thomas E. Smith,**

*Acting Section Chief, Public Document Program Section.*

[FR Doc. 00-23249 Filed 9-8-00; 8:45 am]

**BILLING CODE 7590-01-P**

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### Summary of Proposal(s)

(1) *Collection title:* RUIA Investigations and Continuing Entitlement.

(2) *Form(s) submitted:* UI-9, UI-23, UI-44, ID-4F, ID-4U, ID-4X, ID-4Y, ID-20-1, ID-20-2 and ID-20-4.

(3) *OMB Number:* 3220-0025.

(4) *Expiration date of current OMB clearance:* 11/30/2000.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, business or other for-profit, non-profit institutions, State, Local or Tribal Government.

(7) *Estimated annual number of respondents:* 2,005.

(8) *Total annual responses:* 2,005.

(9) *Total annual reporting hours:* 234.

(10) *Collection description:* The statements obtain information needed to reconcile the compensation and/or service on record to qualify a claimant for unemployment or sickness benefits. Collects information necessary to maintain an employment service.

#### ADDITIONAL INFORMATION OR COMMENTS:

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and the OMB reviewer, Joe Lackey (202-395-7316), Office of Management and

Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**  
Clearance Officer.

[FR Doc. 00-23225 Filed 9-8-00; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

#### Extension:

Rule 17Ad-13, SEC File No. 270-263, OMB Control No. 3235-0275

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Rule 17Ad-13, Annual Study and Evaluation of Internal Accounting Control Rule 17Ad-13 requires approximately 200 registered transfer agents to obtain an annual report on the adequacy of internal accounting controls. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad-13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad-13.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad-13 is one-hundred seventy-five hours annually. The total burden is 35,000 hours annually for transfer agents, based upon past submissions. The average cost per hour is approximately \$60. Therefore, the total cost of compliance for transfer agents is \$1,300,000.

The retention period for the recordkeeping requirement under Rule 17Ad-13 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement

under Rule 17Ad-13 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within sixty days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 31, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-23216 Filed 9-8-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24632; File No. 812-12040]

### Brazos Insurance Funds, Notice of Application

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an order of exemption under Section 6(c) of the Investment Company Act of 1940 ("1940 Act"), as amended, for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

*Summary of Application:* Applicants seek an order to the extent necessary to permit shares of any current or future series of Brazos Insurance Funds ("Trust") and shares of any other

investment company that is designed to fund variable insurance products and for which John McStay Investment Counsel, L.P. ("Adviser"), or any of its affiliates, may serve now or in the future, as investment adviser, administrator, principal underwriter or sponsor (the Trust and such other investment companies referred to collectively as "Insurance Products Funds") to be sold to, and held by, (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context; and (3) the Adviser to an Insurance Products Fund and affiliates thereof (the "Application").

*Applicants:* Brazos Insurance Funds and John McStay Investment Counsel, L.P. (collectively, "Applicants").

*Filing Date:* The application was filed on March 23, 2000, and amended and restated on August 18, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 26, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of your interest, the reason for the request, and the issues you contest. Persons may request notification of the date of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, SEC, 450, 5th Street, NW., Washington, DC 20549-0609. Applicants, c/o Audrey C. Talley, Drinker Biddle & Reath LLP, One Logan Square, 18th and Cherry Streets, Philadelphia, Pennsylvania 19103-6996.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Holinsky, Senior Counsel or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. The Adviser, a Delaware limited partnership, is registered as an

investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the Trust.

2. The Trust, an open-end management investment company, is a Delaware business trust currently consisting of one series. In the future, additional series of shares may be added to the Trust.

3. Shares of the Trust are offered to separate accounts of both affiliated and unaffiliated insurance companies ("Participating Insurance Companies") to serve as investment vehicles for variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium contracts). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. The Participating Insurance Companies will establish their own separate accounts and design their own contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws in connection with any variable contract issued by such company. The role of the Insurance Products Funds, so far as the federal securities law are applicable, will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Plans and fulfilling any conditions the Commission may impose upon granting the order requested in the application. Each Participating Insurance Company will enter into a fund participation agreement with an Insurance Products Fund in which the Participating Insurance Company invests.

5. An Insurance Products Fund shares may be offered directly to Plans outside the separate account, in reliance on Treasury Regulation § 1.817-(f)(3)(iii).

6. The Plans may choose one or more Insurance Products Fund as the sole investment under the Plan or as one of several investments. Depending on the Plan, Plan participants may or may not be given the right to select among Insurance Products Funds. Insurance Products Funds shares sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act ("ERISA").

7. An Insurance Products Fund shares may also be offered to the Adviser and its affiliates, in reliance on Treasury Regulation § 1.817-5(f)(3)(i) and (ii).

8. Applicants state that the Treasury Department Regulations permit such

sales as long as the return on shares held by the Adviser and its affiliates is computed in the same manner as for shares held by a separate account, and the Adviser and its affiliates do not intend to sell shares of the Insurance Products Funds held by it to the public. An additional restriction is imposed by the Regulations on sales to the Adviser and its affiliates, who may hold shares only in connection with the creation or management of an Insurance Products Fund. Applicants anticipate that sales in reliance on these provisions of the Regulations generally will be made to the Adviser and its affiliates and generally for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

#### Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be sold to, and held by: (a) Variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company ("mixed" funding) and separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) ("shared" funding); (b) Plans; and (c) the Adviser and its affiliates.

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants assert that the requested exemptions and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (the "Trust Account"), Rule 6e-2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e-2(b)(15) are available only where all of the assets of the separate

account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6e-2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company. In addition, the relief granted by Rule 6e-2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company or to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The relief granted by Rule 6e-2(b)(15) also is not available if the shares of the Insurance Products Funds are sold to Plans or the Advisers.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e-3(T)(b)(15) are available only where all of the assets of the separate account consists of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either schedule contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account. Therefore, the exemptions provided by rule 6e-3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but not available if the fund is engaged in shared funding or if the fund sells shares to Plans or the Advisers. The relief granted by Rule 6e-3(T)(b)(15) also is not available if the shares of the Insurance Products Funds are sold to Plans or the Advisers.

5. Applicants state that the current tax law permits the Insurance Products Funds to increase their asset base

through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of the variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. § 1.817-5(f)(3)(iii)).

6. Applicants also state that the current tax law permits the Insurance Products Funds to sell shares to the Adviser and its affiliates subject to certain conditions (Treas. Reg. § 1.817-5(f)(3)(i) and (ii)).

7. Applicants state that the promulgation of Rules 6e-2(b)(15) and 6e-3(T)(b)(15) preceded the issuance of the Treasury regulations which made it possible for shares of an investment company to be held by a Plan or an investment adviser, or its affiliates, without adversely affecting the ability of shares in the same investment company also to be held by separate accounts of insurance companies in connection with their contracts. Thus, Applicants assert, the sale of shares of the same investment company to separate accounts, Plans, the Adviser and its affiliates could not have been envisioned at the time of the adoption of Rules 6e-2(b)(15) and 6e-3(T)(b)(15), given the then-current tax law.

8. Applicants assert that if the Insurance Products Funds were to sell only to other Plans, the Adviser and its affiliates, and to separate accounts funding variable annuity contracts, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e-2 and 6e-3(T) relates to Plans or to the Adviser and its affiliates or to a registered investment company's ability to sell its shares to such purchasers. Exemptive relief is requested only because some of the

separate accounts that will invest in an Insurance Products Fund may themselves be investment companies that rely on Rules 6e-2 and 6e-3(T) and need to have the relief continue in place.

9. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e-2(b)(15)(i) and (ii), and 6e-3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

10. Applicants state that the relief provided by Rules 6e-2(b)(15) and 6e-3(T)(b)(15) does not disqualify the insurance company or any of its affiliates from serving as the underlying investment company's investment adviser or principal underwriter, provided that the disqualified individual does not participate directly in the management or administration of the underlying investment company. Applicants further state that the relief from section 9(a) provided by Rules 6e-2(b)(15) and 6e-3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals who do not directly participate in the admission or management of the Insurance Products Funds. Applicants assert that it also is not necessary to apply the restrictions of Section 9(a) to individuals employed by various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Products Funds as the funding medium for contracts. Applicants do not expect the Participating Insurance Companies to play any role in the management or administration of the Insurance Products Funds.

11. Applicants assert that applying the restrictions of Section 9(a) to individuals employed by Participating Insurance Companies serves no regulatory purpose.

12. Applicants state that the relief requested should not be affected by the proposed sale of the Insurance Products Funds to Plans, the Adviser and its affiliates since Plans, the Adviser and its affiliates are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings.

13. Applicants submit that Sections 13(a), 15(a) and 15(b) of the 1940 Act require "pass-through" voting with respect to management investment company shares held by a separate account to permit the insurance company to disregard the voting instructions of its contract holders in certain limited circumstances. For example, Applicants state that subparagraph (b)(15)(iii)(B) of Rules 6e-2 and 6e-3(T) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any changes in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e-2 and 6e-3(T).

14. Applicants state that Rule 6e-2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants assert that in adopting Rule 6e-2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority to disapprove or require changes in investment policies, investment advisers, or principal underwriters. Applicants also maintain that the Commission has expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owner over the insurer's objection. Applicants state that the Commission deemed such exemptions necessary to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further state that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts, and that therefore corresponding provisions of Rule 6e-3(T) were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e-2.

15. Applicants further represent that the sale of an Insurance Products Fund shares to Plans, the Adviser and its affiliates should not have any impact on the relief requested. Shares of the Insurance Products Funds will be held by the trustees of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Applicants state that there is no pass-through voting to Plan participants. Similarly, the Adviser and its affiliates are not subject to any pass-through voting requirements. Accordingly, Applicants assert that, unlike the case with the insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans, the Adviser and its affiliates.

16. Applicants state that some of the Plans may provide for the trustee(s), investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants. Applicants state that, in such cases, the purchase of shares by the Plans does not present any complications not otherwise occasioned by mixed or shared funding.

17. Applicants note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life insurance separate accounts. Applicants state that Treasury Regulations § 1.817-5(f)(3)(iii), which established diversification requirements for such funds, specifically permits, among other things, "qualified pension or retirement plans" and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, the Treasury

regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity separate accounts, variable life separate accounts, and the Adviser and its affiliates all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Insurance Products Funds at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the insurance company will make distributions in accordance with the terms of the variable contract.

19. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Plans, the Adviser and its affiliates does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a Plan participant, the Adviser and its affiliates. Regardless of the rights and benefits of participants under Plans, contract owners, or the Adviser and its affiliates under the contracts, the Plans, the Adviser and its affiliates, and the separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Insurance Products Funds. No shareholder of any Insurance Products Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

20. Applicants state that there are no conflicts of interest between the contract owners of the separate accounts and the participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. To accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from a fund and reinvest the moneys in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold

cash pending suitable investment. Therefore, Applicants assert that even if issues arise whether the interests of the variable contract owners and the interests of Plan participants conflict, the issues can be resolved almost immediately because the trustees of the Plans can, on their own, redeem shares out of an Insurance Products Fund.

21. Applicants submit that shared funding by unaffiliated insurance companies does not present any conflict of interest issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants state that if a particular state insurance regulator's decision conflicts with a majority of other insurance regulators, the affected insurer may be required to withdraw its separate account's investment in an Insurance Products Fund. Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

22. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce.

23. Applicants also assert that affiliation does not eliminate the potential, if any exists, for divergent judgment as to when a Participating Insurance Company can disregard contract owners' voting instructions. Potential disagreement is limited by the requirements that the disregarding of voting instructions be reasonable and based on specific good faith determinations. However, if a Participating Insurance Company's decision to disregard voting instructions represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of an Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund. No charge or penalty will be imposed upon contract owners as a result of such a withdrawal.

24. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies

would or should be if such Insurance Products Fund or series thereof funded only variable annuity contracts or variable life insurance policies. Applicants state that the Insurance Products Funds will not favor or disfavor any particular participating insurer or type of insurance product. Applicants further note that an Insurance Products Fund's adviser is legally obligated to manage the fund in accordance with its investment objective, policies and restrictions as well as any guidelines established by the fund's Board.

25. Applicants assert that with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Plans, the Adviser, and affiliates of the Adviser. The transfer agent for the Insurance Products Funds will inform each Participating Insurance Company of its share ownership in each separate account, as well as inform the trustees of Plans, the Adviser and its affiliates. The Participating Insurance Company then solicits voting instructions in accordance with Rules 6e-2 and 6e-3(T).

26. Applicants assert that permitting an Insurance Products Fund to sell its shares to the Adviser and its affiliates in compliance with Treasury Regulation § 1.817-5 will enhance fund management without raising significant concerns regarding material irreconcilable conflicts. Applicants state that unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, an Insurance Products Fund may be deemed to lack an insurance company "promoter" for purposes of Rule 14a-2 under the 1940 Act. Applicants state that they anticipate that many other Insurance Products Funds may lack an insurance company promoter. Accordingly, Applicants state that such Insurance Products Funds will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of \$100,000 upon making a public offering of its shares.

27. Applicants assert that given the conditions of Treasury Regulation § 1.817-5(f)(3) and the harmony of interest between an Insurance Products Fund and its Adviser or a Participating Insurance Company, little incentive for overreaching exists. Applicants also argue that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants represent that permitting investment by the Adviser and its

affiliates will permit the orderly and efficient creation and operation of the Insurance Products Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of an Insurance Products Fund's operations.

28. Applicants state that various factors have limited the number of insurance companies that offer variable contracts. These factors include the cost of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts. In particular, a number of smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants state that use of the Insurance Products Funds as a common investment medium for variable contracts and Plans would help alleviate these concerns for smaller life insurance companies because Participating Insurance Companies and Plans will benefit not only from the investment and administrative expertise of the Adviser and its affiliate but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the funds available for mixed and shared funding and permitting the purchase of fund shares by Plans may encourage more life insurance companies to offer variable contracts. Applicants submit that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants further assert that mixed and shared funding would permit a greater amount of assets available for investment by the Insurance Products Funds thereby promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new portfolios more feasible.

29. Applicants believe that mixed and shared funding and sales of the Insurance Products Funds shares to Plans, the Adviser and its affiliates will have no adverse federal income tax consequences.

#### Applicants' Conditions

Applicants consent to the following conditions if the application is granted:

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each a "Board") shall consist of persons who are not "interested

persons" thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the remaining Board members; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Insurance Products Fund for the existence of any material irreconcilable conflict among the interests of the Variable Contract owner of all separate accounts investing in an Insurance Products Fund and of the Plan participants, Plans, and the Adviser or its affiliates investing in the Insurance Products Funds. The Board will determine what action, if any, shall be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Plans; (f) a decision by a participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. In the event that a Plan participant should become an owner of 10% or more of the assets of an Insurance Products Fund, such participant will execute a fund participation agreement providing for the conditions of this herein. A Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of an Insurance Products Fund.

4. Participating Insurance Companies, the Adviser and its affiliates, and any Plan that executes a fund participation agreement (collectively "Participants") upon becoming an owner of 10% or

more of the assets of an Insurance Products Fund (collectively "Participants"), will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by a Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Plans investing in the Insurance Products Funds under their respective agreements governing participation in the Insurance Products Funds, as well as a contractual obligation of any Plan that executes such a participation agreement, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the Variable Contract owners and, if applicable, Plan participants.

5. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors) shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Insurance Products Funds or any series thereof and reinvesting such assets in a different investment medium which may include another series of the Insurance Products Funds; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity or life insurance contract owners, or variable contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered

management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw the separate account's investment in an Insurance Products Fund, and no charge or penalty will be imposed as a result of such withdrawal.

If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of an Insurance Products Fund, to withdraw its investment in the fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans that have executed participation agreements under their agreements governing participation in an Insurance Products Fund. These responsibilities will be carried out with a view only to the interests of the contract owners and Plan participants, as appropriate.

6. For the purposes of Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict. In no event will the Insurance Products Funds or Adviser be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by Condition 5 to establish a new funding medium for any variable contract if a majority of contract owners materially and adversely affected by the material irreconcilable conflict vote to decline such offer. No Plan shall be required by Condition 5 to establish a new funding medium for such Plan if: (a) A majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer; or (b) pursuant to governing plan documents and applicable law, the Plan makes such decision without a Plan participant.

7. Participants will be informed promptly in writing of a Board's determination of the existence of a

material irreconcilable conflict and its implications.

8. Participating insurance companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Insurance Products Funds or series thereof held in their registered separate accounts in a manner consistent with timely voting instructions received from contract owners.

In addition, each Participation Insurance Company will vote shares of the Insurance Products Funds, or series thereof, held in its separate accounts for which it has not received timely voting instructions as well as shares it beneficially owns or are attributable to it, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their registered separate accounts participating in an Insurance Products Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered separate accounts investing in an Insurance Products Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Products Funds. Each Plan will vote as required by applicable law and governing Plan documents.

9. The Insurance Products Funds will notify Participating Insurance Companies and Plans that prospectuses or plan documents disclosure regarding potential risks of mixed and shared funding may be appropriate. The Insurance Products Funds shall disclose in its prospectus that: (a) Its shares are offered to insurance company separate accounts which fund both annuity and life insurance contracts and to Plans; (b) differences in tax treatment or other considerations may cause the interests of various contract owners participating in an Insurance Products Fund and the interest of Plans investing in an Insurance Products Fund to conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

10. All reports of potential or existing conflicts of interest received by the Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a

conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e-2 or Rule 6e-3(T) are amended, or Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e-2 or Rule 6e-3(T), as amended, or Rule 6e-3, as adopted, to the extent such rules are applicable.

12. The Insurance Products Funds will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of an Insurance Products Fund). In particular, the Insurance Products Funds will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the fund is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Insurance Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

13. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Adviser will vote its shares in the same proportion as all contrast owners having voting rights with respect to the Insurance Products Funds; provided, however, that the Adviser shall vote its shares in such other manner as may be required by the Commission or its staff.

14. No less than annually, the Participants shall submit to the Board of an Insurance Products Fund such reports, materials or data as the Board may reasonably request so that such Board may carry out fully the obligations imposed upon it by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently

if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Plans to provide these reports, materials and data upon reasonable request of a Board shall be contractual obligation of all Participating Insurance Companies and any Plan that has executed a participation agreement under the agreements governing their participation in an Insurance Products Fund.

15. Any shares of a fund purchased by the Adviser or its affiliates will be automatically redeemed if and when the Adviser's investment advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither the Adviser nor its affiliates will sell such shares of the Insurance Products Funds to the public.

16. A Participating Insurance Company, or any affiliate, will maintain at its home office, available to the Commission, (a) a list of its officers, directors and employees who participate directly in the management or administration of the funds or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the funds and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a separate account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

### Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-23171 Filed 9-8-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27226]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 1, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 26, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 26, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Energy East Corp., et. al. [70-9675]

Energy East Corp. ("Energy East"), P.O. Box 1196, Stamford, Connecticut 06904-1196, a New York corporation and a public-utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission,<sup>1</sup> CIS Service Bureau, L.L.C. ("CIS"), 855 Main Street, Bridgeport, CT 06604, as indirect wholly owned nonutility subsidiary of Connecticut Energy Corp. and The Union Water-Power Company ("UWP"), 526 Western Avenue, Augusta, ME 04330, a wholly owned nonutility subsidiary of CMP Group, Inc. ("CMP Group") (collectively, "Applicants") have filed an application under section 13(b) of the Act and rules 87, 88, 90, and 91 under the Act.<sup>2</sup>

<sup>1</sup> Holding Co. Act Release No. 27128 (Feb. 2, 2000).

<sup>2</sup> Energy East filed two related applications seeking approvals required to complete the proposed acquisitions ("Merger") by Energy East of CMP Group, a Maine corporation and a public-utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission; CTG Resources, Inc., a Connecticut corporation and a public-utility holding company exempt from registration under section 3(a)(1) by rule 2 under the Act and Berkshire Energy Resources, a Massachusetts corporation and a public-utility holding company exempt from registration under section 3(a)(1) by rule 2 under the Act (File No. 70-9569). By order dated August 31, 2000 (HCAR No. 27224) ("Merger Order") the

Applicants request the Commission to authorize: (1) The designation of Energy East Management Corp. ("EE Management") as a subsidiary service company in accordance with the provisions of rule 88 under Act; (2) the provision of intra-system administrative, management and support services by EE Management to the Energy East system companies; (3) the form of services agreements ("Services Agreements") that EE Management proposes to enter into with each associate company; and (4) agreements entered into between CIS and UWP with other associate utility subsidiaries under an exemption to the at-cost standards of the Act.<sup>3</sup>

Upon completion of the Merger, Energy East will own interests in the following eight public-utility companies, each of which will be wholly owned by companies within the Energy East system, unless otherwise indicated: (1) New York State Electric & Gas; (2) The Southern Connecticut Gas Company; (3) Maine Natural Gas, L.L.C. (formerly CMP Natural Gas, L.L.C.);<sup>4</sup> Central Maine Power Company; (5) Maine Electric Power Company, Inc. ("MEPCo");<sup>5</sup> (6) NORVARCO; (7) Connecticut Natural Gas Corporation; and (8) The Berkshire Gas Company (collectively, "Utility Subsidiaries").

Upon completion of the Merger, Energy East will also own various other subsidiary companies, described in Appendix A to the Merger Order, that are not public-utility companies under the Act (collectively, "Nonutility Subsidiaries"). Among the Nonutility Subsidiaries is EE Management, a Delaware corporation and a direct wholly owned subsidiary of Energy East that was organized in 1999 to invest the proceeds of the sale of Energy East's coal-fired generation assets.

Energy East will register as a public-utility holding company upon completion of the Merger. Following the Merger, EE Management proposes to

provide the Energy East system companies with a variety of administrative, management and support services. These services will be provided in accordance with Services Agreements that EE Management will enter into with each of the Utility subsidiaries and Nonutility Subsidiaries that it serves. Applicants state that EE Management will be organized and will conduct its operations so as to meet the requirements of section 13 of the Act and the rules under the Act.

Applicants also state that the Services Agreements will be structured and administered in accordance with the Act and rules under the Act. The cost of services payable to EE Management under the Services Agreements will be computed in accordance with the applicable rules under the Act and with appropriate accounting standards. Where more than one company is involved in or has received benefits from a service performed by EE Management, the Services Agreements will provide that client companies will pay their fairly allocated *pro rata* share in accordance with the methods set out in appendices to the Services Agreements. The Services Agreements will provide methodologies to ensure that the client companies pay to EE Management the cost of all services, computed in accordance with Commission rules and regulations under the Act and appropriate accounting standards.

Applicants state that EE Management will be staffed by employees who will be transferred over time from other Energy East system companies. In addition, EE Management will have access to certain employees who will remain employees of other system companies. Employees of other system companies who devote a portion of their time to EE Management will directly charge to EE Management the applicable portion of their time, including allocation of overhead costs.

Applicants request an exemption from the at-cost provisions of section 13(b) of the Act and rules 90 and 91 under the Act in connection with the sale of goods or services by the following companies in connection with the following agreements: (1) To permit UWP (which is currently party to five agreements with Central Maine Power having various termination dates, and proposes to enter into a sixth agreement) to continue to provide services to Central Maine Power at market-based rates, which have been or will be submitted for approval to the Maine Public

Utilities Commission;<sup>6</sup> (2) to permit CIS, which provides customer information services to Southern Connecticut Gas under an agreement for a monthly fee based on the number of Southern Connecticut Gas customers billed, to maintain these agreements in effect, including entering into any extensions and renewals of these agreements, following Energy East's registration as a holding company; and (3) to permit UWP and CIS to enter into agreements with other Utility Subsidiaries, on substantially the same terms, following Energy East's registration as a holding company.

#### NiSource Inc., et al. [70-9551]

NiSource Inc. ("NiSource"), formerly NIPSCO Industries, Inc., an Indiana corporation, 801 East 86th Avenue, Merrillville, Indiana 46410-6272, a public utility holding company exempt from registration under section 3(a)(1) under the Act by order, New NiSource Inc. ("New NiSource"), 801 East 86th Avenue, Merrillville, Indiana 46410-6272, a wholly owned subsidiary of NiSource, and Columbia Energy Group ("Columbia"), 13880 Dulles Corner Lane, Herndon, Virginia 20171-4600 (collectively, "Applicants"), have filed a joint application-declaration under sections 6(a), 7, 8, 9(a), 10, 11, 13(b), and rules 87, 88, 90 and 91 under the Act.

Applicants state that New NiSource will register as a public utility holding company under section 5 of the Act.<sup>7</sup>

#### The Proposed Merger

NiSource, New NiSource, Columbia, Parent Acquisition Corporation ("Parent Acquisition"), a wholly owned subsidiary of New NiSource, and Company Acquisition Corp. ("Company Acquisition") and NiSource Finance Corp., an Indiana corporation and a direct and wholly owned subsidiary of New NiSource, entered into an amended and restated agreement and plan of merger dated March 31, 2000 ("Merger Agreement"). Under the Merger Agreement, Parent Acquisition will merge into NiSource and Company Acquisition will merge into Columbia. NiSource and Columbia will be the surviving corporations in those mergers and will become wholly owned subsidiaries of New NiSource.

<sup>6</sup> After the Merger UWP proposes to offer similar services to other Utility Subsidiaries. UWP also provides these services to unaffiliated utilities and other customers.

<sup>7</sup> The Applicants and certain of their subsidiaries have also filed in S.E.C. file no. 70-9681 an application-declaration related to the financing of the proposed New NiSource registered holding company system. A notice of that filing will be issued at a later date.

Commission authorized the Merger. The second related application (File No. 70-9609) was filed seeking approval for a program of external financing, credit support arrangements, and other related financing proposals.

<sup>3</sup> In addition, Applicants request that the Commission find that this application is deemed to constitute a filing on Form U-13-1 for purposes of rule 88 under the Act, or, alternatively, that the filing of a Form U-13-1 is not necessary under the Act.

<sup>4</sup> Maine Natural Gas is a joint venture between New England Gas Development Corp. (holding a 19% interest), a wholly owned subsidiary of CMP Group, and Energy East Enterprises (holding an 81% interest), a wholly owned subsidiary of Energy East.

<sup>5</sup> Central Maine Power owns 78.3% voting interest of MEPCo with the remaining interests owned by two other Maine utilities.

Immediately after these mergers, NiSource will merge into New NiSource. New NiSource will then change its name to "NiSource Inc." (still referred to herein as "New NiSource") and serve as a holding company for Columbia and its subsidiaries and the current subsidiaries of NiSource ("Merger").

NiSource shareholders will receive one common share of New NiSource for each of their NiSource common shares and after the merger the NiSource shareholders will own no less than 53% of the New NiSource shares. Columbia shareholders will receive, for each of their Columbia common shares, either (1) \$70 in cash, and \$2.60 stated amount of a New NiSource Stock Appreciation Income Linked Security<sup>SM</sup> ("SAILS"), which is a unit consisting of a zero coupon debt security and a forward equity contract having the terms described below, or (2) if the Columbia shareholder elects, the number of New NiSource common shares equal to \$74 divided by the average trading price of NiSource common shares for the 30 consecutive trading days ending two trading days before the completion of the merger, which number may never be more than 4.4848. Stock elections are subject to proration if the elections exceed 30% of Columbia's outstanding shares. Also, unless Columbia shareholders make stock elections for at least 10% of Columbia's outstanding shares, all Columbia shareholders will receive cash and New NiSource SAILS in the merger.

If the merger is not completed by February 27, 2001, Columbia shareholders will receive, for each of their Columbia common shares, an additional amount in cash equal to interest at 7% per annum on \$72.29 for the period beginning on February 27, 2001 and ending on the day before the completion of the merger, less the amount of any cash dividends paid on Columbia common shares with a record date after February 27, 2001.

Each SAILS is a unit consisting of a share purchase contract and a debenture. The share purchase contract represents the holder's obligation to purchase common shares on the fourth anniversary of completion of the merger, and the debenture is pledged to secure that obligation. Under the share purchase contract, a holder will receive for each New NiSource SAILS, on the fourth anniversary of the completion of the merger, the following number of New NiSource common shares: (1) If the average closing price of the common shares on the New York Stock Exchange over a 30-day period before the fourth anniversary equals or exceeds \$23.10,

the holder will receive 0.1126 common shares; (2) if the average closing price is less than \$23.10 but greater than \$16.50, the holder will receive a number of common shares equal to \$2.60 divided by the average closing price; and (3) if the average closing price is less than or equal to \$16.50, the holder will receive 0.1576 common shares. The debenture that is initially part of each New NiSource SAILS will have a principal amount of \$2.60. The debenture will not pay interest for the first four years after the merger.

Unless a holder chooses to make a cash payment of \$2.60 to settle the purchase contract, the debenture that is pledged as collateral will be remarketed shortly before the fourth anniversary of the merger, and the proceeds will be used to pay the amount the holder would owe under the purchase contract. If the remarketing is successful, proceeds from the sale will be delivered to New NiSource as payment for the common shares. If the remarketing agent cannot remarket the debentures, New NiSource will exercise its rights as a secured party and take possession of the debentures. In either case, the holder's obligation to purchase shares of New NiSource common stock will be fully satisfied, and the holder will receive New NiSource common shares.

Shareholders of Columbia at the time of the merger who did not vote in favor of the merger and who made a demand for appraisal of their shares under the Delaware General Corporation Law (the "DGCL") Section 262 may perfect their demand for appraisal rights of those shares following the effective date of the merger in accordance with Section 262 of the DGCL.

#### Financing of the Offer and Transaction

New NiSource will issue approximately 124.7 million shares of common stock, par value of \$.01 per share, in exchange for the outstanding common stock of NiSource, based on the number of shares outstanding on February 29, 2000. Assuming 30% of the outstanding Columbia shares are exchanged for New NiSource common stock (which NiSource believes is a reasonable assumption), approximately 109.2 million shares of New NiSource common stock will be issued in the merger to Columbia's shareholders. In addition, New NiSource will issue SAILS, which will result in the issuance of between 6.4 million and 9.0 million shares of New NiSource common stock on the fourth anniversary date of the merger depending on the New NiSource stock price, assuming 30% of the outstanding shares are exchanged for the stock consideration.

NiSource estimates that the cash payments to Columbia shareholders in the merger will range from approximately \$4 billion, assuming 30% of the outstanding Columbia shares are exchanged for the stock consideration, to approximately \$6 billion, if all of the Columbia shares are exchanged for the cash and SAILS consideration. In addition, NiSource expects approximately \$2.4 billion of Columbia's existing debt to remain outstanding after the merger.

As a result of the Merger, the combined company will have *pro forma* operating revenues of approximately \$6.2 billion for the twelve months ended June 30, 2000. The combined company will also have *pro forma* assets of \$17.8 billion as of June 30, 2000, including an adjustment of approximately \$3.8 billion to reflect the premium paid for Columbia ("goodwill") and estimated Merger costs. The Merger will be accounted for using the purchase method of accounting. New NiSource will not push down the goodwill to Columbia or its subsidiaries.<sup>8</sup>

#### Parties to the Merger

##### *NiSource and Its Subsidiaries*

NiSource was incorporated in 1987 to serve as the holding company for Northern Indiana, which is a public utility under the Act, and various nonutility subsidiaries. NiSource has three additional direct public utility subsidiaries, Kokomo Gas and Fuel Company ("Kokomo Gas"), Northern Indiana Fuel and Light Company, ("NIFL"), Bay State, and one indirect public utility subsidiary, Northern Utilities, Inc. ("Northern"). NiSource is currently an exempt holding company pursuant to an order under section 3(a)(1) of the Act.<sup>9</sup>

NiSource holds all of the issued and outstanding common stock of Northern Indiana, which is a combination gas and electric utility company, which operates, in 30 counties in the northern part of Indiana, serving an area of about 12,000 square miles with a population of approximately 2,200,000. Northern Indiana distributes gas to approximately 681,100 residential, commercial and industrial customers and generates, purchases, transmits and sells electricity to approximately 426,000 electric customers.

<sup>8</sup> See Staff Accounting Bulletin 54, Topic 5.J, question 2 (granting an exception to push down accounting for companies with significant debt or preferred stock).

<sup>9</sup> See NIPSCO, Industries, Inc., Holding Co. Act Release No. 26975 (Feb. 10, 1999).

Northern Indiana owns and operates four coal-fired electric generating stations with an aggregate net capability of 3,179 MW, two hydroelectric generating plants with an aggregate net capability of 10 MW, and four gas-fired combustion turbine generating units with an aggregate net capability of 203 MW, for a total system net capability of 3,392 MW. Northern Indiana's transmission system consists of 3,068 circuit miles of lines with voltages ranging from 34.5 kV to 345 kV. Northern Indiana's electric distribution system extends into 21 counties in the northern third of Indiana and consists of 7,800 circuit miles of overhead and 1,571 cable miles of underground primary distribution lines operating at various voltages ranging from 2.4 kV to 12.5 kV.

NiSource holds all of the issued and outstanding common stock of Kokomo Gas, which supplies natural gas to approximately 34,500 customers in a six-county area of north central Indiana having a population of approximately 100,000. The Kokomo Gas service territory is contiguous to Northern Indiana's gas service territory.

NiSource holds all of the issued and outstanding common stock of NIFL, which supplies natural gas to approximately 35,500 customers in five counties in the northeast corner of Indiana having a population of approximately 66,700. The NIFL service territory is also contiguous to Northern Indiana's gas service territory and overlaps Northern Indiana's electric service territory. Northern Indiana has initiated a multi-phase customer choice program to allow residential and small commercial customers the right to choose alternative gas suppliers.

The three Indiana operating utility subsidiaries of NiSource are subject to regulation by the Indiana Utility Regulatory Commission ("IURC") as to rates, service and other matters.

NiSource also holds all of the issued and outstanding common stock of Bay State, which provides gas service to approximately 271,900 residential, commercial and industrial customers in three separate areas of Massachusetts covering approximately 1,344 square miles and having a combined population of approximately 1,340,000. These include the greater Springfield area in western Massachusetts, an area southwest of Boston that includes the cities of Attleboro, Brockton and Taunton, and an area north of Boston extending to the New Hampshire border that includes the city of Lawrence. Bay State is subject to regulation by the MDTE as to rates, service and other matters. Bay State, which owns all of

the issued and outstanding common stock of Northern, is currently claiming an exemption as a holding company under section 3(a)(2) of the Act and under rule 2 of the Act. Bay State intends to maintain that exemption following the merger so long as Northern remains its subsidiary.

Northern, a wholly owned subsidiary of Bay State, provides gas service to approximately 48,100 residential, commercial and industrial customers in an area of approximately 808 square miles in New Hampshire and Maine having a population of approximately 450,000. Northern's service area extends north from the Massachusetts-New Hampshire border to the Portland/Lewiston area in Maine. Northern is subject to regulation by the New Hampshire Public Utilities Commission and the Maine Public Utilities Commission as to rates, service and other matters.

At December 31, 1999, the NiSource gas distribution system in Indiana included approximately 13,924 miles of distribution mains to serve 751,100 customers. In addition, Northern Indiana owns and operates underground gas storage facilities located at Royal Center, Indiana with a storage capacity of 6.75 billion cubic feet (Bcf), and a liquefied natural gas ("LNG") plant in LaPorte County, Indiana having a storage capacity of 4.0 Bcf, which is used for system pressure maintenance and peak season (November-March) deliveries. Northern Indiana also holds under long-term contract storage capacity totaling approximately 9.11 Bcf in the Markham, Moss Bluff and Egan salt-dome storage caverns in Texas and Louisiana and the Rotherwood Facility in Texas.

At December 31, 1999, NiSource's New England gas distribution utilities included 5,450 miles of distribution mains, 116 miles of transmission lines and customer connections to serve 320,000 customers. Bay State and Northern also own and operate LNG liquefaction, vaporization and storage facilities and propane storage tanks used to store supplemental and peak shaving supplies. At December 31, 1999, NiSource's combined gas system consisted of 19,374 miles of distribution mains, together with associated compressing and regulating stations, LNG liquefaction, vaporization and storage facilities, propane storage tanks and 1,071,221 customers.

For the twelve months ended June 30, 2000, the gas and electric public utility subsidiaries of NiSource reported operating income of \$508.9 million (\$134.2 million gas and \$374.7 million electric) on combined operating gas and

electric utility revenues of approximately \$2.3 billion. For the twelve months ended June 30, 2000, the consolidated operating revenues of NiSource and its subsidiaries was approximately \$3.6 billion, including approximately \$1.2 billion gas and \$1.1 billion electric. Gas sales (including transportation revenues) accounted for approximately 52% and electric sales accounted for approximately 48% of NiSource's gross utility revenues. Consolidated assets of NiSource and its subsidiaries as of June 30, 2000, were approximately \$7.2 billion, consisting of \$5.5 billion in gas and electric utility assets (\$2.7 billion gas and \$2.8 billion electric) and \$1.7 billion in other nonutility assets. As of June 30, 2000, NiSource had 121,183,197 shares of common stock issued and outstanding. NiSource's common stock is listed on the New York Stock Exchange, the Pacific Stock Exchange and the Chicago Stock Exchange.

NiSource owns all of the outstanding common stock of NiSource Pipeline Group, Inc. ("NPG"). NPG wholly owns Granite State Gas Transmission, Inc. ("Granite State") and PNGTS Holding Corp. ("PNGTS Holding"). Granite State owns and operates an interstate pipeline. PNGTS Holding, together with Granite State, hold a 19.0% interest in PNGTS, a natural gas transmission line.

NI Energy Service, Inc. ("NI Energy Services") is a direct wholly owned subsidiary of NiSource. NI Energy Services wholly owns Crossroads Pipeline Company ("Crossroads"), which is a natural gas transportation company that was certificated by the Federal Energy Regulatory Commission ("FERC") in May 1995 to operate as an interstate pipeline.

EnergyUSA, Inc. ("EnergyUSA"), a wholly owned subsidiary of NiSource, serves as an intermediate holding company for many of NiSource's nonutility businesses and coordinates the energy-related diversification efforts of NiSource. Through subsidiaries, EnergyUSA owns businesses engaged in the following activities: (1) Energy marketing; (2) gas storage; (3) residential/small commercial gas and propane marketing; (4) appliance leasing; (5) oil and gas exploration and production; and (6) energy management services. The subsidiaries of EnergyUSA that engage in the activities are discussed below:

TPC, a wholly owned direct subsidiary of EnergyUSA, markets gas to commercial and industrial entities, on a national basis including customers in areas served by NiSource's gas distribution utilities and provides gas

asset management and optimization to gas utilities.

NI Energy Services, Inc., a wholly owned direct subsidiary of NiSource, and TPC Storage Holding Corp. and TPC Gas Storage Services, L.P., NiSource's wholly owned indirect subsidiaries, own 100% of MHP, which develops and operates underground gas storage facilities. Through MHP and its wholly owned indirect subsidiaries, Moss Bluff Hub Partners, L.P. and Egan Hub Partners, L.P., NiSource provides gas storage services to a number of utilities, gas marketers and other customers, including Northern Indiana.

EnergyUSA Retail, Inc. ("EnergyUSA Retail") provides gas and other energy-related products and services to residential and small commercial customers of utilities that allow competitive suppliers to market in their service territories. EnergyUSA Retail also sells propane and leases water heaters to customers in New England.

EnergyUSA Commercial Energy Services, Inc. provides traditional energy management services, including power quality consulting and energy management, to commercial and industrial entities.

EnergyUSA is a minority owner in Mosaic Energy LLC, a new venture created to develop and market proprietary fuel cell distribute generation technology. EnergyUSA also provides gas supply services to other NiSource affiliates, including Kokomo Gas and NIFL. Additionally, EnergyUSA has equity interests in a domestic oil and gas producer with properties located in Texas, Oklahoma and Louisiana.

Primary Energy, Inc. ("Primary"), a wholly owned subsidiary of NiSource, arranges energy-related projects for large energy-intensive industrial facilities through its wholly owned subsidiaries: Harbor Coal Company, North Lake Energy Corporation, Lakeside Energy Corporation, Cokenergy, Inc., Whiting Clean Energy, Inc., and Ironside Energy LLC.

SM&P Utility Resources, Inc. ("SM&P"), Colcom Incorporated ("Colcom"), each a wholly owned subsidiary of NiSource, and Underground Technology, Inc. ("UTI") (of which NiSource owns 50%) perform underground facilities locating for utilities throughout the United States.

Miller Pipeline Corporation ("Miller"), a wholly owned indirect subsidiary of NiSource, installs, repairs and maintains underground pipelines used in gas and water transmission and distribution systems. Miller also sells products and services related to

infrastructure preservation and replacement.

NiSource, through an intermediate holding company, IWC Resources Corporation ("IWCR"), owns all of the stock in six water companies (Indianapolis Water Company, Harbour Water Corporation, Liberty Water Corporation, Irishman's Run Acquisition Corp., The Darlington Water Works Company and IWC Morgan Water Corporation) and has an operating agreement with the City of Lawrence, Indiana, which is being treated as a purchase by IWCR in accordance with generally accepted accounting principles (collectively, the "Water Utilities"). The Water Utilities supply water to residential, commercial and industrial customers and for fire protection service in Indianapolis, Indiana and surrounding areas.

NiSource Development Company, Inc. ("Development") has investments in various activities, primarily in real estate, intended to complement NiSource's energy businesses. Development's wholly owned subsidiaries are: South Works Power Company ("South Works"), JOF Transportation Company ("JOF Transportation"), NDC Douglas Properties, Inc., ("Douglas Properties"), KOGAF Enterprises, Inc. ("KOGAF"), and Lake Erie Land Company ("Lake Erie"). The activities of these subsidiaries are discussed below:

South Works leases electric generating and transmission facilities owned by U.S. Steel and located in south Chicago, Illinois.

JOF Transportation owns a 40% passive interest in railroad assets in the vicinity of several electric generating plants owned by Northern Indiana and which Northern Indiana currently uses to deliver coal to its electric generating plants.

Douglas Properties, Inc. has 15 passive interests in multiple-family residential developments, most of which are in the service territory of NiSource's utility subsidiaries.

KOGAF, a wholly owned subsidiary of Development, has a passive interest in a limited partnership which is conducting a project to revitalize downtown Kokomo, Indiana, which is in the service territory of Kokomo Gas.

Lake Erie owns wetlands that can be used as offsets to enable developers to obtain approval for projects that require filling of wetlands. Lake Erie and a subsidiary also develop and operate tracts of land within the service territories of NiSource utility subsidiaries into model communities that serve community development and environmental interests.

Capital Markets, a wholly owned subsidiary of NiSource, provides financing for certain of NiSource's subsidiaries other than Northern Indiana.

NiSource Corporate Services Company ("Corporate Services"), a wholly owned subsidiary of NiSource, provides management, administrative, gas portfolio management, accounting and other services to the various NiSource companies. Hamilton Harbour Insurance Services, Ltd., a wholly owned subsidiary of NiSource, provides various insurance services to the NiSource companies.

#### *Columbia and Its Subsidiaries*

Columbia, formerly The Columbia Gas System, Inc., is a registered public utility holding company. Columbia and its subsidiaries engage in natural gas distribution and exploration for production of natural gas and oil. Columbia is also engaged in related energy businesses including the distribution of propane and petroleum products, marketing of natural gas and electricity and the generation of electricity, primarily fueled by natural gas.

Columbia provides natural gas distribution services in a five-state region in the Midwest and mid-Atlantic United States through its five wholly owned public utility subsidiaries: Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), Columbia Gas of Maryland, Inc. ("Columbia Maryland"), Columbia Gas of Ohio, Inc. ("Columbia Ohio"), Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania") and Columbia Gas of Virginia, Inc. ("Columbia Virginia"). Columbia's five distribution subsidiaries provide natural gas service to nearly 2.1 million residential, commercial and industrial customers in Kentucky, Maryland, Ohio, Pennsylvania and Virginia. Approximately 32,400 miles of distribution pipelines serve these major markets. The distribution subsidiaries have initiated transportation programs that allow residential and small commercial customers the opportunity to choose their natural gas suppliers and to use the distribution subsidiaries for transportation service. This ability to choose a supplier was previously limited to larger commercial and industrial customers.

Columbia Kentucky supplies natural gas to approximately 142,000 retail customers in a 31-county area of central and eastern Kentucky having a population of approximately 965,000. Columbia Kentucky owns 2,433 miles of distribution pipeline. Columbia Kentucky is subject to regulation by the

Kentucky Public Service Commission as to rates, service and other matters.

Columbia Maryland supplies natural gas to approximately 31,800 retail customers in a three-county area of western Maryland having a population of approximately 227,000. Columbia Maryland owns 601 miles of distribution pipeline. Columbia Maryland is subject to regulation by the Maryland Public Service Commission as to rates, service and other matters.

Columbia Ohio supplies natural gas to approximately 1,309,200 retail customers in a 53-county area of north central and southeastern Ohio having a population of approximately 6,700,000. Columbia Ohio owns a total of 18,387 miles of distribution pipeline. Columbia Ohio is subject to regulation by the Public Utilities Commission of Ohio as to rates, service and other matters.

Columbia Pennsylvania supplies natural gas to approximately 390,000 retail customers in a 26-county area of central and southwestern Pennsylvania having a population of approximately 2,380,000. Columbia Pennsylvania is subject to regulation by the Pennsylvania Public Utility Commission as to rates, service and other matters.

Columbia Virginia supplies natural gas to over 177,000 retail customers throughout Virginia. Columbia Virginia is subject to regulation by the Virginia State Corporation Commission as to rates, service and other matters.

Columbia also owns, directly or indirectly, various nonutility subsidiaries.<sup>10</sup> The material nonutility businesses are: Columbia Transmission Corporation ("Columbia Transmission"), Columbia Gulf Transmission Company ("Columbia Gulf"), Columbia Pipeline Corporation ("Columbia Pipeline"), Columbia Energy Resources, Inc. ("Columbia Resources"), Columbia Energy Services Corp. ("Columbia Energy Services"), Columbia Propane Corporation ("Corporation Propane"), Columbia Petroleum Corporation ("Columbia Petroleum"),<sup>11</sup> Columbia Electric Corporation ("Columbia Electric"), Columbia LNG Corporation ("Columbia LNG") and Columbia Transmission Communications Corporation ("Columbia Communications").

Columbia Transmission and Columbia Gulf, Columbia's two interstate pipeline

subsidiaries, own a pipeline network of approximately 16,250 miles extending from offshore in the Gulf of Mexico to Lake Erie, New York and the eastern seaboard. In addition, Columbia Transmission operates an underground natural gas storage system. Together, Columbia Transmission and Columbia Gulf serve customers in fifteen northeastern, mid-Atlantic, midwestern and southern states and the District of Columbia. Columbia Gulf's pipeline system extends from offshore Louisiana to West Virginia and transports a major portion of the gas delivered by Columbia Transmission. It also transports gas for third parties within the production areas of the Gulf Coast. Columbia Transmission and Columbia Gulf provide natural gas transportation and storage services for local distribution companies and industrial and commercial customers who contract directly with producers or marketers for their gas supplies.

Columbia Pipeline Corporation and its wholly owned subsidiary, Columbia Deep Water Services Company, operate pipeline and gathering facilities that are not regulated by FERC.

Columbia Resources, through its wholly owned subsidiaries, explores for, develops, gathers and produces natural gas and oil in Appalachia and Canada.

Columbia Energy Services Corporation ("Columbia Energy Services") and its subsidiaries conduct Columbia's non-regulated natural gas and electric power marketing operations and provide service to residential and small commercial customers as a result of the unbundling of services that is occurring at the local distribution level. Columbia Energy Services, through its subsidiary, Columbia Service Partners, Inc., provides a variety of energy-related services to both homeowners and businesses.<sup>12</sup>

Columbia's Electric's primary focus has been the development, ownership and operation of natural gas-fueled power plants. Columbia Electric is part owner in four operating cogeneration projects, which are qualifying facilities ("QF"). Columbia is in the process of divesting its interest in QFs to comply with the Public Utilities Policies Act of 1978, as amended ("PURPA").<sup>13</sup>

<sup>12</sup> Columbia Energy Services recently sold its wholesale gas and electric trading operations and announced that it has entered into a definitive agreement to sell its retail mass marketing business. Columbia Energy Services has also decided to exit its major accounts business. These businesses are currently being reported as discontinued operations.

<sup>13</sup> Pub. L. 95-617, 92 Stat. 3117 (codified in scattered sections of 16 U.S.C.). Columbia's interests will be held by an electric utility holding company as a result of the merger with NiSource.

Columbia Electric is also currently constructing two gas-fired electric generation plants: Liberty Electric Project and Ceredo Generating Station. In December 1999, a limited partnership company established between Columbia Electric and Atlantic Generation, Inc. completed a transaction terminating a long-term power purchase contract. Columbia Electric's portion was approximately \$71 million pre-tax under the terms of the buyout. The partners will continue to operate the facility as a merchant power plant.

Columbia LNG Corporation ("Columbia LNG") provides transition services related to a liquefied natural gas facility located in Cove Point, Maryland.

Columbia Transmission Communications Corporation, a wholly owned subsidiary of Columbia, and its subsidiaries provide telecommunications and information services, assists personal communications services and other microwave radio service licensees in locating and constructing antenna facilities, and is involved in the development of a dark fiber optics network for voice and data communications.

For the twelve months ended June 30, 2000, the utility subsidiaries of Columbia reported operating income of \$245.4 million on utility revenues of approximately \$1.7 billion. Columbia's consolidated revenues for the same period were approximately \$2.6 billion. Consolidated assets of Columbia and its subsidiaries were approximately \$6.8 billion at June 30, 2000, consisting of \$2.6 billion in gas utility assets and \$4.2 billion in other utility assets. As of June 30, 2000, Columbia had 79,512,479 shares of common stock issued and outstanding. Columbia's common stock is listed on the New York Stock Exchange.

### The Combined Operations

The application states that the gas utility operations of NiSource and Columbia, when combined, will constitute a gas integrated public utility system within the meaning of section 2(a)(29)(B) of the Act. In addition, the application states that the current electric utility operations of NiSource will be an electric integrated public utility system within the meaning of

The application states that more than 50% of the equity interests in the four QFs will then be owned by electric utility holding companies, which is not allowed under PURPA. To avoid jeopardizing the QF status of the projects, Columbia is divesting its interests in the four QFs. Columbia plans to relinquish its ownership interests in the four QFs before the Merger closes.

<sup>10</sup> The application states that the nonutility operations of Columbia have all been previously authorized under the Act or have been established under a rule or statutory exemption.

<sup>11</sup> Columbia Propane, which sells propane at wholesale and retail, and Columbia Petroleum, which owns and operates petroleum assets, are currently being prepared for sale. They are being reported as discontinued operations.

section 2(a)(29)(A) of the Act. The Applicants propose to own the gas utility system as the "primary system" and the electric utility system as the "secondary system."

The application states that the gas utility system resulting from the Transaction will include eight gas utilities located in the contiguous states of Indiana, Kentucky, Ohio, Pennsylvania, Virginia and Maryland and two gas utilities located in the contiguous states of Massachusetts, New Hampshire and Maine. The Applicants state that the utilities located in contiguous states will be directly interconnected by affiliated and nonaffiliated interstate pipelines and storage. Applicants propose that the utilities be effectively connected by industry-recognized trading centers and market hubs. Applicants also state that the entire gas system will integrate its process of portfolio management and efficiently and economically deploy its pipeline and storage capacity and supply sources through these direct and indirect interconnects and market centers.

Applicants also indicate that the gas portfolios of Columbia and NiSource overlap substantially with respect to sources of supply. Both companies now purchase and will continue to purchase most of their gas from the Gulf Coast Basin (onshore and offshore Texas and Louisiana producing region). Moreover, they will each have enhanced opportunities to increase their respective purchases of gas produced in the Mid-Continent and Western Canada supply basins.

Applicants state that the NiSource and Columbia gas utility systems also currently hold firm transportation service agreements on a number of the same interstate pipelines, including ANR, Panhandle Eastern, Tennessee Gas, Texas Eastern and Transco. The NiSource midwestern gas utilities are physically linked through Crossroads' interconnections with Columbia Transmission, Trunkline and Panhandle Eastern with a common interstate transmission system (Columbia transmission) that serves each of the Columbia gas distribution utilities. The Columbia and NiSource gas distribution utilities also make use of other regional pipelines to transport and deliver Gulf Coast, Mid-Continent, Canadian and Appalachian-sourced supplies, including Crossroads, National Fuel and CNG Transmission Corporation.

The electric system will consist of Northern Indiana's existing utility system.

### Interim Service Company Agreement

Corporate Services currently provides management, financial, accounting, general administrative, budgeting, business development, systems and procedures, training, gas supply and other services to NiSource as well as to certain of the public utility and nonutility subsidiaries of NiSource under cost-based arrangements. In addition, Bay States provides some of these same services to its subsidiaries that predate NiSource's acquisition of Bay State. The Applicants state that within 120 days after the Merger New NiSource will file a separate application to form a new service company that will serve the New NiSource system ("New Service Company"). The Applicants state that the new service company will be finalized within one year after the Merger.<sup>14</sup>

It is contemplated that as a result of the Merger, some centralization of service functions will occur. During the period of the year the New NiSource requests to form its New Service Company ("Transition Period"), Applicants propose that an interim service company agreement be in place. During the Transition Period, Applicants propose that Corporate Services will continue to provide services to New NiSource and to NiSource's current utility and nonutility subsidiaries, and Columbia Services will continue to provide services to its associate companies in the Columbia system under the service company arrangements that have been approved by the Commission. Corporate Service will enter into an interim service agreement with each client company. In addition, in order to ensure that an allocable portion of certain services to be provided by Corporate Services (e.g., executive services) are properly charged or allocated to all of NiSource's subsidiaries after the Merger, Corporate Services will also enter into a service agreement with Columbia Services. Any charges by Corporate Services to Columbia Services will in turn be assigned and allocated to Columbia and its subsidiaries in accordance with the terms of the existing Columbia system service arrangements.

Following completion of the Merger, Applicants state that all services provided by Corporate Services to associate utility and nonutility companies will be provided to system companies in compliance with all provisions of the Act, including section 13(b) of the Act and rules 90 and 91 under the Act.

<sup>14</sup> This is subject to New NiSource receiving all of the necessary regulatory approvals.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 00-23172 Filed 9-8-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 11, 2000.

Hearings will be held on Wednesday, September 13, 2000 at 8:45 a.m. at the Pace Downtown Theatre at Pace University, located at Spruce Street between Park Row and Gold Street (across from City Hall Park) in New York City.

The Commission will hold public hearings on its proposed rule amendments concerning auditor independence. The purpose of the hearings is to give the Commission the benefit of the views of interested members of the public regarding the issues raised and questions posed in the Proposing Release (33-7870). For further information, contact: John M. Morrissey, Deputy Chief Accountant or W. Scott Bayless, Associate Chief Accountant, Office of the Chief Accountant at (202) 942-4400.

A closed meeting will be held on Thursday, September 14, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, September 14, 2000 will be: institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: September 6, 2000.

**Jonathan G. Katz,**

Secretary.

[FR Doc. 00-23339 Filed 9-7-00; 11:22 am]

BILLING CODE 8010-01-M

## SOCIAL SECURITY ADMINISTRATION

### [Social Security Acquiescence Ruling 00-4(2)]

#### **Curry v. Apfel; Burden of Proving Residual Functional Capacity at Step Five of the Sequential Evaluation Process for Determining Disability—Titles II and XVI of the Social Security Act**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Acquiescence Ruling.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 00-4(2).

**EFFECTIVE DATE:** September 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

**SUPPLEMENTARY INFORMATION:** We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative review within the Second Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after September 11, 2000. If we made a determination or decision on your application for benefits between April 7, 2000, the date of the Court of Appeals' decision, and September 11, 2000, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR

404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your claim.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2).

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: August 24, 2000.

**Kenneth S. Apfel,**

Commissioner of Social Security.

#### **Acquiescence Ruling 00-4(2)**

*Curry v. Apfel*, 209 F.3d 117 (2d Cir. 2000)—Burden of Proving Residual Functional Capacity at Step Five of the Sequential Evaluation Process for Determining Disability—Titles II and XVI of the Social Security Act.<sup>1</sup>

**Issue:** Whether we have the burden of proving residual functional capacity (RFC) at step five of the sequential

evaluation process for determining disability in 20 CFR 404.1520 and 416.920.

**Statute/Regulation/Ruling Citation:** Sections 205(a), 223(d)(2)(A), 223(d)(5), 702(a)(5), 1614(a)(3)(B), 1614(a)(3)(H) and 1631(d)(1) of the Social Security Act (42 U.S.C. 405(a), 423(d)(2)(A), 423(d)(5), 902(a)(5), 1382c(a)(3)(B), 1382c(a)(3)(H) and 1383(d)(1)) and; 20 CFR 404.1512, 404.1520, 404.1527, 404.1545, 404.1546, 416.912, 416.920, 416.927, 416.945, 416.946, Social Security Rulings 96-5p and 96-8p.

**Circuit:** Second (Connecticut, New York and Vermont).

*Curry v. Apfel*, 209 F.3d 117 (2d Cir. 2000).

**Applicability of Ruling:** This Ruling applies to all determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing, and Appeals Council).

**Description of Case:** Cordie Curry injured his back and right knee on September 30, 1987, when he jumped or fell from a ladder to avoid hot water flowing from a pipe. Mr. Curry was referred to an orthopedic surgeon for lower back pain, and received physical therapy from January 14, 1988, through June 28, 1988. The orthopedic surgeon performed surgery on Mr. Curry's knee on July 13, 1988, and diagnosed an internal derangement. In February and March 1995, Mr. Curry again saw the orthopedic surgeon, who diagnosed osteoarthritis in both knees and completed a "medical assessment" form.<sup>2</sup> This treating physician concluded that Mr. Curry could sit for 2 hours continuously, stand for 30 minutes at a time and walk for 15 minutes at a time. In his physician's opinion, during the course of an 8-hour day, Mr. Curry could sit for no more than 2-3 hours, stand for a total of 1 hour and walk a total of 30 minutes. The treating physician also provided an opinion that Mr. Curry could occasionally lift up to 20 pounds and occasionally carry up to 10 pounds.<sup>3</sup>

On September 28, 1993, Mr. Curry filed an application for disability benefits claiming an inability to work since October 9, 1990. In connection with this application, Mr. Curry was examined on January 24, 1994, by a consulting physician who reported that an X-ray of the knee showed mild

<sup>2</sup> We deleted the term "medical assessment" from 20 CFR 404.1513 and 416.913 on August 1, 1991, and replaced it with the terms "statement about what you can still do despite your impairment(s)" and "medical source statement." See 56 FR 36932.

<sup>3</sup> In a second "medical assessment" form, another treating physician, Dr. Hussapibis, concurred with Dr. Hobeika's opinion.

<sup>1</sup> Although *Curry* was a title II case, similar principles also apply to title XVI. Therefore, this Ruling applies to both title II and title XVI disability claims.

degenerative joint disease. The consulting physician concluded that Mr. Curry had "moderate" impairment of lifting and carrying activities, and "mild" impairment in standing and walking, pushing and pulling, and sitting.

After a hearing, an ALJ decided that Mr. Curry was not disabled based on a finding that he retained the RFC to perform the exertional requirements of at least sedentary work. The ALJ found that Mr. Curry's impairments prevented him from performing his past relevant work, but that "the record [did] not establish that [he was] unable to sit for prolonged periods of time, lift and carry ten pounds and perform the minimal standing and walking required for sedentary work activity."

After the Appeals Council denied Mr. Curry's request for review, he sought judicial review. The district court held that our final decision was supported by substantial evidence. On appeal to the United States Court of Appeals for the Second Circuit, the court reversed and remanded the case for calculation of disability benefits.

**Holding:** The Second Circuit held that we have the burden of proving at step five of the sequential evaluation process that the claimant has the RFC to perform other work which exists in the national economy. The court found that, in this case, the ALJ's conclusions about RFC evidenced a disregard for this procedure.

#### *Statement as to How Curry Differs From SSA's Interpretation of the Regulations*

Under sections 205(a), 223(d)(5), 1614(a)(3) and 1631(d)(1) of the Act, and 20 CFR 404.1512 and 416.912 of our regulations, the claimant generally bears the burden of proving disability by furnishing medical and other evidence we can use to reach conclusions about his or her impairment(s), and its effect on his or her ability to work on a sustained basis. Our responsibility is to make every reasonable effort to develop a claimant's complete medical history including to arrange for consultative examinations, if necessary.

There is a shift in the burden of proof, "only if the sequential evaluation process proceeds to the fifth step

\* \* \*. It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so." *Bowen v. Yuckert*, 482 U.S. 137, 146 n5 (1987). However, once a claimant establishes that he or she is unable to do past relevant work, it would be unreasonable to further require him or her to produce vocational evidence showing that there are no jobs in the national economy that

a person with his or her RFC can perform. Accordingly, the only burden shift that occurs at step five is that we are required to prove that there is other work that the claimant can perform, given his or her RFC.

Therefore, under our interpretation of our regulations, we do not have the burden at step five (or step four) to prove what the claimant's RFC is. We assess RFC one time, after concluding that a claimant's impairment(s) is "severe" but does not meet or equal a listing in the Listing of Impairments in appendix 1 of subpart P of 20 CFR part 404. Although we use this assessment at steps four and five of the sequential evaluation process, we make the assessment at a step in the process at which the claimant is responsible for proving disability.

The Second Circuit has expanded our burden of proof at step five beyond the issue of work which exists in significant numbers to the assessment of RFC. The Second Circuit held that, in determining disability at step five, we have the burden of proving that a claimant retains the RFC to perform other work.

#### *Explanation of How SSA Will Apply The Curry Decision Within the Circuit*

This Ruling applies only to claims in which the claimant resides in Connecticut, New York, or Vermont at the time of the determination or decision at any level of administrative review; i.e., initial, reconsideration, ALJ hearing, or Appeals Council review.

In making a disability determination or decision at step five of the sequential evaluation process, we have the burden of proving with sufficient evidence that a claimant can perform the requirements of other work. To meet this burden, we will assess RFC by evaluating all of the relevant evidence in the case record about a claimant's impairment(s) according to our rules for assessing RFC, and will in our determinations and decisions or in the case record certify that there is sufficient evidence to support our findings regarding RFC at step five, and refer to the relevant evidence or the explanation (e.g., the RFC assessment form) in which the relevant evidence is cited.

We will apply this Social Security Acquiescence Ruling to current and reopened claims governed by the court-approved settlement in *Stieberger v. Sullivan*, 801 F. Supp. 1079 (S.D.N.Y. 1992), but not to the extent it is inconsistent with that settlement.

We intend to clarify our regulations regarding a claimant's burden to provide evidence of RFC, and we may rescind

this Ruling once we have made the clarification.

[FR Doc. 00-23217 Filed 9-8-00; 8:45 am]

BILLING CODE 4191-02-F

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[USCG 2000-7821]

#### **Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115-0628 and 2115-0015**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise Navigation Safety Equipment and Emergency Instructions for Certain Towing Vessels, and Shipping Articles. Before submitting the ICRs to OMB, the Coast Guard is requesting comments on the collections described below.

**DATES:** Comments must reach the Coast Guard on or before November 13, 2000.

**ADDRESSES:** You may mail comments to the Docket Management System (DMS) [USCG 2000-7821], U.S. Department of Transportation (DOT), room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, or deliver them to room PL-401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

The DMS maintains the public docket for this request. Comments will become part of this docket and will be available for inspection or copying in room PL-401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at <http://dms.dot.gov>.

Copies of the complete ICRs are available through this docket on the Internet at <http://dms.dot.gov> and also from Commandant (G-CIM-2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593-0001. The telephone number is 202-267-2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202-267-2326, for questions on this document; Dorothy

Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202-366-9330, for questions on the docket.

#### Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000-7821], and give the reason for the comment. Please submit all comments and attachments in an unbound format no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

#### Information Collection Request

1. *Title:* : Navigation Safety Equipment and Emergency Instructions for Certain Towing Vessels.

*OMB Control Number:* 2115-0628.

*Summary:* Rules on Navigation safety equipment help assure that the mariner piloting a towing vessel has adequate equipment, charts, maps, and other publications. For inspected towing vessels, a muster list and emergency instructions provide effective plans and references for crew to follow in an emergency.

*Need:* The purpose of the rules is to improve the safety of towing vessels and the crews that operate them.

*Respondents:* Owners, operators, and masters of vessels.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden is 281,998 hours annually.

2. *Title:* Shipping Articles.

*OMB No.* 2115-0015.

*Summary:* The collection of information requires merchant mariners to complete form CG-705A, Shipping Articles, before entering the service of a shipping company.

*Need:* 46 U.S.C. 10103, 10302, 10303, 10304, and 10307 require a master of a vessel to have each crewmember make a shipping-article agreement in writing before proceeding on a voyage.

*Respondents:* Merchant mariners.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden is 18,000 hours annually.

Dated: September 5, 2000.

**V.S. Crea,**

*Director of Information and Technology.*

[FR Doc. 00-23258 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-15-U**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[USCG 2000-7379]

#### Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Number 2115-0644

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces the Coast Guard has forwarded one Information Collection Report (ICR) abstracted below to OMB for review and comment. This ICR describes the information we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before October 11, 2000.

**ADDRESSES:** Please send comments to both (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street N.W., Washington, DC 20503, attention, Desk Officer, USCG.

Copies of the complete ICR are available for inspection and copying in public docket USCG 2000-7379 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at <http://dms.dot.gov>; and for inspection from the Commandant (G-CIM-2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202-267-2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202-366-9330, for questions on the docket.

#### SUPPLEMENTARY INFORMATION

#### Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published (65 FR 100 (May 23, 2000)) the 60-day notice required by OMB. That request elicited no comments.

#### Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information required by these collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2000-7379. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

#### Information Collection Requests

1. *Title:* Understanding how Mariners use Aids to Navigation-A

Systems-Analysis Project for the U.S. Coast Guard Research and Development Center.

*OMB Control Number:* 2115-0644.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Navigators of vessels.

*Form(s):* N/A.

*Abstract:* The survey is being done under the mandates of the National Performance Review and Executive Order 12802. It will enable program officers in aids to navigation (AtoN) to assess navigational risk, implement appropriate AtoN strategies, and measure the effectiveness of the program in reducing the number of vessel collisions, allisions, and groundings.

*Annual Estimated Burden Hours:* The estimated burden is 1624 hours a year.

Dated: September 5, 2000.

**V.S. Crea,**

*Director of Information and Technology.*

[FR Doc. 00-23261 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

[Summary Notice No. PE-2000-43]

**Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 2, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Cherie Jack (202) 267-7271, Forest Rawls (202) 267-8033, or Vanessa Wilkins (202) 267-8029 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 5, 2000.

**Joseph A. Conte,**  
*Acting, Assistant Chief Counsel for Regulations.*

**Dispositions of Petitions***Docket No.:* 30011*Petitioner:* Ameriflight, Inc.*Section of the FAR Affected:* 14 CFR 135.243(c)(2)*Description of Relief Sought/*

*Disposition:* To permit its pilots in command (PICs) of single-engine piston-powered airplanes to operate under instrument flight rules (IFR) with a minimum of 800 hours of flight time, including 400 hours of cross-country flight time and 75 hours of night flight time; and (2) allow its PICs of multi-engine piston-powered airplanes with maximum takeoff weights not greater than 8,000 pounds to operate under IFR with a minimum of 1,000 hours of flight time.

*Denial, 08/18/00, Exemption No. 7321**Docket No.:* 29934*Petitioner:* Rotorcraft Leasing Company, L.L.C.*Section of the FAR Affected:* 14 CFR 136.152(a)*Description of Relief Sought/*

*Disposition:* To permit RLC to operate a mixed fleet of Bell 212 and 412 helicopters without those helicopters being equipped with an approved digital flight data recorder.

*Grant, 08/18/00, Exemption No. 7320**Docket No.:* 30156*Petitioner:* Continental Express Airlines, Inc.*Section of the FAR Affected:* 14 CFR 121.344(e)*Description of Relief Sought/*

*Disposition:* To permit CEA to operate ten newly manufactured EMB-145/135 airplanes that are delivered to Continental after August 18, 2000, and prior to January 31, 2001, without those airplanes being able to record data.

*Grant, 08/21/00, Exemption No. 7323**Docket No.:* 30158*Petitioner:* Mesa Airlines, Inc.*Section of the FAR Affected:* 14 CFR 121.344(e)*Description of Relief Sought/*

*Disposition:* To permit MA to operate five newly manufactured EMB-145-LR airplanes that are delivered to Mesa after August 18, 2000, and prior to January 31, 2001, without those airplanes being able to record data.

*Grant, 08/21/00, Exemption No. 7324**Docket No.:* 30152*Petitioner:* American Eagle Airlines, Inc.*Section of the FAR Affected:* 14 CFR 121.344(e)*Description of Relief Sought/*

*Disposition:* To permit AME to operate ten newly manufactured EMB-135 airplanes that are delivered to AME after August 18, 2000, and prior to January 31, 2001, without those airplanes being able to record data.

*Grant, 08/18/00, Exemption No. 7319**Docket No.:* 29986*Petitioner:* Lifeport, Inc.*Section of the FAR Affected:* 14 CFR 25.562 and 25.785(b)*Description of Relief Sought/*

*Disposition:* To permit certification of medical stretchers for transport of persons whose medical condition dictates such accommodation. The exemption is for an installation on a Cessna Model 560XL airplane.

*Grant, 08/16/00, Exemption No. 7318**Docket No.:* 28257*Petitioner:* Flight Structures, Inc.*Section of the FAR Affected:* 14 CFR 25.785(d), 25.813(b), 25.857(e), and 25.1447(c)(1) & (c)(3)(ii)*Description of Relief Sought/*

*Disposition:* To permit supplemental type certification of Airbus Model A300-B4-100 series and -200 series passenger-to-freighter airplane conversions, with provisions for the carriage of up to six persons other than flight crewmembers when the airplane is equipped with two floor-level exits with escape slides, within the occupied main deck area.

*Grant, 08/15/00, Exemption No. 6178B**Docket No.:* 30023*Petitioner:* Lufthansa Technik*Section of the FAR Affected:* 14 CFR 25.562, 25.785(gb), 25.785(h)(2), 25.785(j), 25.813(e), and 25.853(d)*Description of Relief Sought/*

*Disposition:* To permit the installation of a medical berth that does not meet the dynamic seat requirements, flight attendant seats that do not provide direct view of the cabin, a "state room" that does not provide firm "handholds" in the aisle, to allow the installation of interior doors between passenger compartments, and to install interior materials that do not comply with heat release and smoke emissions requirements for Boeing Model 777-2AN airplane serial number 29953.

*Grant, 08/15/00, Exemption No. 7317**Docket No.:* CE160*Petitioner:* Ayres Corporation*Section of the FAR Affected:* 14 CFR 23.3*Description of Relief Sought/*

*Disposition:* To permit Ayres Corporation to certificate the Model LM200 "Loadmaster," as a 19,000-pound maximum gross weight

commuter category airplane with a novel and unique twin engine, single propeller propulsion system and limit seating to a maximum of 9 passengers.

*Grant, 08/07/00, Exemption No. 7306*

[FR Doc. 00-23183 Filed 9-8-00; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2000-44]

#### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 2, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (ARC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Cherie Jack (202) 267-7271, Forest Rawls (202) 267-8033, or Vanessa Wilkins (202) 267-8029 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 5, 2000.

**Joseph A. Conte,**

*Acting Assistant Chief Counsel for Regulations.*

#### Dispositions of Petitions

*Docket No.: 28718*

*Petitioner:* The Goodyear Tire & Rubber Company

*Section of the FAR Affected:* 14 CFR 21.325(b)(3)

*Description of Relief Sought/*

*Disposition:* To permit the issuance of export airworthiness approvals for aircraft tires manufactured and located at Goodyear's Bangkok, Thailand, facility.

*Grant, 08/14/00, Exemption No. 6682C*

*Docket No.: 29509*

*Petitioner:* Michelin Aircraft Tire Corporation

*Section of the FAR Affected:* 14 CFR 21.325(b)(3)

*Description of Relief Sought/*

*Disposition:* To permit the issuance of U.S. export airworthiness approvals for aircraft tires manufactured and located at Michelin's Nong Khae, Thailand facility.

*Grant, 08/14/00, Exemption No. 7099A*

*Docket No.: 30163*

*Petitioner:* Skyfest Michiana

*Section of the FAR Affected:* 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121

*Description of Relief Sought/*

*Disposition:* To permit Skyfest Michiana to conduct local sightseeing flights at Goshen Municipal Airport, Indiana, for its three-day airshow event in August 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

*Grant, 08/24/00, Exemption No. 7326*

*Docket No.: 30171*

*Petitioner:* Chautauqua Airlines, Inc.

*Section of the FAR Affected:* 14 CFR 121.344(e)

*Description of Relief Sought/*

*Disposition:* To permit CA to operate seven newly manufactured EMB-145 airplanes that are delivered to Chautauqua after August 18, 2000, and prior to January 31, 2001, without those airplanes being able to record data.

*Grant, 08/21/00, Exemption No. 7322*

*Docket No.: 29309*

*Petitioner:* Hi-Lift Helicopters International, Ltd.

*Section of the FAR Affected:* 14 CFR 133.19(a)(3) and 133.51

*Description of Relief Sought/*

*Disposition:* To permit Hi-Lift to conduct external-loan operations in the United States using Canadian-registered rotorcraft.

*Grant, 08/18/00, Exemption No. 6814A*

*Docket No.: 26048*

*Petitioner:* National Test Pilot School

*Section of the FAR Affected:* 14 CFR 91.319(a) (1) and (2)

*Description of Relief Sought/*

*Disposition:* To permit NTPS to operate aircraft that have experimental certificates to train flight test students who are pilots and flight engineers through the demonstration and practice of flight test techniques, and to teach these students flight test data acquisition methods for compensation.

*Grant, 08/18/00, Exemption No. 5778E*

*Docket No.: 22872*

*Petitioner:* Air Transport Association of America

*Section of the FAR Affected:* 14 CFR 121.424(a), (b) and (d) (1); item I(a) of appendix E to part 121; and I(b) of appendix F to part 121

*Description of Relief Sought/*

*Disposition:* To permit ATA member airlines and other qualifying part 121 certificate holders to conduct training and checking of pilots on airplanes that require two flight crewmembers for the required preflight inspection, both interior and exterior, using approved advanced pictorial means.

*Grant, 08/18/00, Exemption No. 4416H*

*Docket No.: 27294*

*Petitioner:* Air Transport Association of America

*Section of the FAR Affected:* 14 CFR 121.309(f)(2)

*Description of Relief Sought/*

*Disposition:* To permit ATA-member airlines to locate the aft megaphone at door 4-left on their Boeing 747 aircraft.

*Grant, 08/18/00, Exemption No. 6140C*

[FR Doc. 00-23184 Filed 9-8-00; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Announcement of Receipt of Notice To Extend Public Comment Period on Proposed Restriction on Operations of Stage 2 and 3 Aircraft at Flying Cloud Airport, Eden Prairie, MN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) has been notified

by the Metropolitan Airports Commission (MAC) that it is extending the public comment period from August 30, 2000, to October 16, 2000, regarding its proposal to restrict jet aircraft not meeting Federal Aviation Regulation (FAR) Part 36 stage 3 requirements from using the Flying Cloud Airport between the nighttime hours of 2200 and 0600 local time, and to restrict nighttime maintenance run-ups for all aircraft between the nighttime hours of 2200 and 0600 local time. An initial announcement of proposed restriction on Stage 2 and 3 operations at Flying Cloud Airport was published by FAA in the **Federal Register** on August 4, 2000.

The MAC has provided notice of the proposed restriction and an opportunity to comment to the public pursuant to the Airport Noise and Capacity Act of 1990 and Federal Aviation Regulation, Part 161. Notice of the proposed restrictions and availability of the analysis was locally published by the MAC on July 11, 2000. A public hearing on the proposed restrictions was held at 7 PM on August 15, 2000, in the auditorium of the Hennepin Technical College, 9200 Flying Cloud Drive, Eden Prairie, MN. The public comment period is extended from August 30, 2000, to October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mark Ryan, Metropolitan Airports Commission, 2901 Metro Drive, Suite 525, Bloomington, MN 55425; Phone: (612) 726-8129; Fax: (612) 794-4407. These documents are also available for public inspection at the above address.

Issued in Minneapolis, MN, on August 29, 2000.

**Robert A. Huber,**

*Acting Manager, Minneapolis Airports District Office, Great Lakes Region.*

[FR Doc. 00-23179 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Commercial Space Transportation Advisory Committee; Open Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Commercial Space Transportation Advisory Committee Open Meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday,

October 19, 2000, from 8:00 a.m. to 1:00 p.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW, Washington, DC, in the Bessie Coleman Conference Center (second floor). This will be the thirty-second meeting of the COMSTAC.

The agenda for the meeting will include reports from the COMSTAC Working Groups; a legislative update on Congressional activities involving commercial space transportation; an activities report from FAA's Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]); and a briefing on the final results of the Defense Science Review Board by Mr. Edward Aldridge, President, The Aerospace Corporation. The meeting is open to the public; however, space is limited.

Meetings of the Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support Working Groups will be held on Wednesday, October 18, 2000. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

**FOR FURTHER INFORMATION, CONTACT:** Brenda Parker (AST-200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 267-8308; E-mail [brenda.parker@faa.dot.gov](mailto:brenda.parker@faa.dot.gov).

Issued in Washington, DC, September 1, 2000.

**Patricia G. Smith,**

*Associate Administrator for Commercial Space Transportation.*

[FR Doc. 00-23173 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### RTCA Special Committee 193/ EUROCAE Working Group 44; Terrain and Airport Databases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44

meeting to be held September 25-29, 2000, starting at 9 a.m. The meeting will be held at STNA (Service Technique de la Navigation Aerie) 1, Av.Du Dr. Maurice Grynfolgel, 31035 Toulouse, Cedex, France.

The agenda will include: September 25: Opening Plenary Session: (1) Welcome and Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Review Summary of the Previous Meeting; (4) Presentation: "In-flight DEM Integrity Monitoring"; (5) Subgroup 2, Terrain and Obstacle Databases and Subgroup 3 (Airport Databases); (6) Review Summary of the Previous Meeting; (7) Review Actions the Previous Meeting; (8) Review of the Draft Document; September 26 and 27: (9) Continue Subgroups 2 and 3 Discussion; September 28: Plenary Session: (10) Presentation/Discussion; (11) Continue Subgroups 2 and 3 Discussion; September 29: (12) Continue Subgroup 2 and 3 Discussion, as required; (13) Closing Plenary Session: (14) Summary of Subgroup 2 and 3 meetings; (15) Review Action Items; (16) Other Business; (17) Date and Location of Next Meeting; (18) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833-9339 (phone), (202) 833-9434 (fax), or <http://www.rtca.org> (web site) or the on-site contact: Mr. Philippe Caisso, at 011-33-5-62-14-58-59 (phone), 011-33-5-62-14-58-53 (fax) or email [CAISSOPhilippe@stna.dgac.fr](mailto:CAISSOPhilippe@stna.dgac.fr). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 30, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00-23180 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### RTCA Special Committee 195; Flight Information Services Communications (FISC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)-195 meeting to be held September 26-28, 2000, starting at 8:30 a.m. each

day. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., suite 1020, Washington, DC, 20036.

The agenda will include: June 6: Plenary convenes: (1) Welcome and Introductory Remarks; (2) Agenda Overview; (3) Working Group (WG)-1, Aircraft Cockpit Weather Display; Plenary reconvenes: (4) Review of Previous Meeting Minutes; (5) Report from WG-1 on Activities; (6) Review Action Items; September 27: (7) Review of FIS-B Minimum Aviation System Performance Standards (MASPS) Section 4.0, Procedures for Performance Requirement Verification, Development; (8) Work on FIS-B MASPS; September 28: (9) Work on FIS-B MASPS continues; (10) Review Issues (Action Items); (11) Review FIS-B MASPS Document Comment Form Approval Process; (12) Date and Location of Next Meeting; (13) Other Business; (14) Closing.

Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833-9339 (phone); (202) 833-9434 (fax); or <http://www.rtca.org> (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 30, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00-23181 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### **RTCA Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services**

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub.

L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)-165 meeting to be held September 28, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Review of SC-165 Working Group Activities: (a) Working Group (WG)-1 (AMS (R) S Avionics Equipment MOPS); (b) WG-3 (AMS (R) S MASPS); (5) Review/ Approval of Proposed Document: MOPS for Avionics Supporting Next-Generation Satellite Systems (NGSS); (6)) Overview of Related activities: (a) AEEC 741 and 761 Characteristics; (b) EUROCAE WG-55; (c) AMS (R) S Spectrum Issues; (d) ICAO Aeronautical Mobile Communications Panel; (e) Industry, Users, Government; (7) Other Business; (8) Date and Place of Next Meeting; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833-9339 (phone); (202) 833-9434 (fax); or <http://www.rtca.org> (web site). Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on August 30, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00-23182 Filed 9-8-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF VETERANS AFFAIRS

### **Advisory Committee on Geriatrics and Gerontology, Notice of Meeting**

The Department of Veterans Affairs gives notice that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held on September 28, 2000 at the Hilton Alexandria Mark Center located at 5000 Seminary Road, Alexandria, Virginia. The Committee will meet from 8:30 a.m. until 5 p.m. (EST) in the Walnut Room of the Hilton. The purpose of the GGAC is to advise the Secretary of Veterans Affairs and the Under Secretary for Health relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education, and Clinical Centers.

During the one day GGAC meeting, the following are the major items to be presented/discussed:

- Update on implementation of the long-term care provisions of the Millennium Act;
- Discussion of VA pilots on assisted living and on all-inclusive long-term care;
- Status of the four recently designated Geriatric Research, Education, and Clinical Centers;
- Status of existing GRECC's;
- And VA's new Advanced Geriatric Fellowship Program

The meeting will be open to the public. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Geriatrics and Extended Care Strategic Healthcare Group at (202) 273-8539 not later than September 22, 2000.

Dated: August 29, 2000.

By Direction of the Acting Secretary.

**Marvin R. Eason,**

*Committee Management Officer.*

[FR Doc. 00-23202 Filed 9-8-00; 8:45 am]

**BILLING CODE 8320-01-M**



# Federal Register

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**Monday,  
September 11, 2000**

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## **Part II**

## **Department of Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 39**

**Airworthiness Directives; Bell Helicopter  
Textron Canada Model 206A, B, L, L1,  
and L3 Helicopters; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39****[Docket No. 2000-SW-34-AD]****RIN 2120-AA64****Airworthiness Directives; Bell Helicopter Textron Canada Model 206A, B, L, L1, and L3 Helicopters****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 206A, B, L, L1, and L3 helicopters. This proposal would require inspecting the collective lever assembly (assembly) for a raised forging boss, inspecting the assembly for adequate clearance between the collective lever and the swashplate outer ring (outer ring), and modifying any assembly with a raised forging boss and inadequate clearance before further flight. Modifying any assembly that has a raised forging boss and adequate clearance would be required before further flight after January 31, 2001. This proposal is prompted by the discovery that a raised forging boss could result in control system interference. The actions specified by the proposed AD are intended to prevent interference between the collective lever and the outer ring, damage to flight controls, and subsequent loss of control of the helicopter.

**DATES:** The FAA must receive any comments on this proposal by November 13, 2000.

**ADDRESSES:** Submit comments to Docket No. 2000-SW-34-AD in one of the following ways:

- Mail comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW-34-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send a request for a copy of the AD or regulatory evaluation to that address. If you want us to acknowledge receipt of your comments, you must include a self-addressed, stamped postcard on which the Docket Number is written. We will date-stamp your postcard and mail it back to you.
- E-mail comments to 9-asw-adcomments@faa.gov.

You may examine the AD Docket (including any comments and service information) at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The FAA invites you to submit any written relevant data, views, or arguments. Submit your comments as specified under the "ADDRESSES" caption. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. We will file a report in the AD Docket that summarizes each FAA contact with the public that is related to the substantive part of this rule.

The FAA will consider using the plain language format of this document, when appropriate, for future rulemaking actions. The FAA is especially interested in receiving comments on the proposed layout, appearance, and chart-type format used to publish the actions proposed by this NPRM. This format was developed in consultation with the Office of the Federal Register.

We will consider all comments received by the closing date. The proposals or format contained in this document may be changed because of the comments received.

**Availability of NPRM's**

You may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW-34-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

Transport Canada, which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on BHTC Model 206A, B, L, L1, and L3 helicopters. Transport Canada advises that a raised forging boss on the collective lever assemblies could result in control system interference.

BHTC has issued Alert Service Bulletin No's. 206L-00-116, dated March 10, 2000, and 206-00-93, Revision A, dated May 10, 2000. These service bulletins specify examining the

assembly, part number (P/N) 206-010-467-001, and modifying any assembly with a raised forging boss if the clearance between the assembly and the swashplate outer ring is 0.060 inch (1.52mm) or less. The service bulletins also specify modifying, regardless of clearance, the assembly at the next removal of the assembly but no later than January 31, 2001. Transport Canada classified these service bulletins as mandatory and issued AD No. CF-2000-13, dated May 23, 2000, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions 14 CFR 21.29 and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other BHTC Model 206A, B, L, L1, and L3 helicopters of these same type designs registered in the United States. The proposed AD would require, for each assembly, P/N 206-010-467-001:

- Within 30 days, inspecting for a raised forging boss and for adequate clearance;
- Before further flight, modifying any collective lever if the clearance is 0.060 inch (1.52mm) or less between the assembly and the outer ring; and
- Before further flight after January 31, 2001, modifying any assembly that has a forging boss and adequate clearance. The actions would be required to be accomplished in accordance with the service bulletins described previously.

**Regulatory Impact**

We estimate that 6,000 helicopters of U.S. registry would be affected by this proposed AD and that it would take approximately 0.5 work hour per helicopter to inspect and 2 hours to modify the assembly. The average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$900,000. The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. You can get a copy of the draft regulatory evaluation prepared for this action from the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the mailing address listed under the caption "ADDRESSES." Your request must reference "AD Docket No. 2000-SW-34-AD."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. FAA amends § 39.13 by adding the following new airworthiness directive:

#### DEPARTMENT OF TRANSPORTATION Federal Aviation Administration (FAA)

Docket No. 2000-SW-34-AD

Bell Helicopter Textron Canada

Subject: Inspecting and Modifying Collective Lever Assemblies

(a) Comment Due Date	FAA must receive comments by November 13, 2000.
(b) Affected Documents	None.
(c) Applicability	Bell Helicopter Textron Canada Model: 206A (serial numbers (S/N) 004 through 660 and 672 through 715); 206B (S/N 661 through 671, 716 through 4529, and 5101 through 5267); 206L (S/N 45004 through 45153, and 46601 through 46617); 206L1 (S/N 45154 through 45790); and 206L3 (S/N 51001 through 51612) helicopters, with a collective lever assembly (assembly), part number (P/N) 206-010-467-001, installed, certificated in any category.
(d) Unsafe Condition	A raised forging boss could interfere with the control system. That could damage flight controls and cause loss of control of the helicopter.
(e) Compliance	Unless previously accomplished, inspect each assembly within 30 days. Modify any assembly that has a raised forging boss. Modify the assembly before further flight if the clearance is 0.060 inch (1.52mm) or less or before further flight after January 31, 2001 if the clearance is greater than 0.060 inch (1.52mm).
(f) Required Actions	<p>(1) Within 30 days:</p> <p>(i) Inspect each assembly for a raised forging boss in accordance with the Accomplishment Instructions, Part I, paragraphs 1.a., of Bell Helicopter Textron Alert Service Bulletin Nos. 206L-00-116, dated March 10, 2000 (ASB 206L), or 206-00-93, Revision A, dated May 10, 2000 (ASB 206), as applicable, and</p> <p>(ii) If the assembly has a raised forging boss, inspect for clearance in accordance with the Accomplishment Instructions, Part I, paragraphs 2.a. through f., of ASB 206L or ASB 206, as applicable.</p> <p>(2) Modify each assembly in accordance with the Accomplishment Instructions, Part II, paragraphs 1 through 10, of ASB 206L or ASB 206, as applicable, as follows:</p> <p>(i) If the clearance is 0.060 inch (1.52mm) or less at one of the outer ring horns, before further flight.</p> <p>(ii) If the clearance is greater than 0.060 inch (1.52mm) at one of the outer ring horns, before further flight after January 31, 2001.</p>

**DEPARTMENT OF TRANSPORTATION—Continued**  
**Federal Aviation Administration (FAA)**

Docket No. 2000-SW-34-AD  
Bell Helicopter Textron Canada

Subject: Inspecting and Modifying Collective Lever Assemblies

<b>(g) Other Provisions</b>	<p>(1) Alternative Methods of Compliance (AMOC):</p> <p>(i) You may use an AMOC or adjust the time you take to meet the requirements of this AD if your alternative provides an acceptable level of safety and if the Manager, Regulations Group, approves your alternative.</p> <p>(ii) Submit your request for approval through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Regulations Group.</p> <p>(iii) You can get information about the existence of already approved AMOC's by contacting the FAA, Rotorcraft Directorate, Regulations Group, 2601 Meacham Blvd., Fort Worth, Texas 76137.</p> <p>(2) Modifications, Alterations, or Repairs:</p> <p>This AD applies to each helicopter identified in the applicability paragraph, even if it has been modified, altered, or repaired in the area subject to this AD. If that change in any way affects accomplishing the required actions, you must request FAA approval for an AMOC. Your request should assess the effect of the change on the unsafe condition addressed by this AD.</p> <p>(3) Special Flight Permits:</p> <p>The FAA may issue you a special flight permit under 14 CFR 21.197 and 21.199 to operate your helicopter to a location where you can comply with this AD.</p>
<b>(h) Material Incorporated by Reference</b>	Bell Helicopter Textron Alert Service Bulletin Nos. 206L-00-116, dated March 10, 2000, and 206-00-93, Revision A, dated May 10, 2000. Approval of incorporation by reference from the Office of the Federal Register is pending.
<b>(i) Related Information</b>	Transport Canada AD No. CF-2000-13, dated May 23, 2000.

Issued in Fort Worth, Texas on August 10, 2000.

**Henry A. Armstrong,**  
*Manager, Rotorcraft Directorate, Aircraft  
Certification Service.*

[FR Doc. 00-22611 Filed 9-8-00; 8:45 am]

BILLING CODE 4910-13-S



# Federal Register

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**Monday,  
September 11, 2000**

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## **Part III**

## **Department of the Interior**

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### **Fish and Wildlife Service**

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#### **50 CFR Part 17**

**Endangered and Threatened Wildlife and  
Plants; Proposed Designation of Critical  
Habitat for the California Red-Legged  
Frog (*Rana aurora draytonii*); Proposed  
Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AG32****Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the California Red-legged Frog (*Rana aurora draytonii*)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, designate critical habitat pursuant to the Endangered Species Act of 1973, as amended, for the California red-legged frog (*Rana aurora draytonii*). Approximately 2,175,000 hectares (5,373,650 acres) of land fall within the boundaries of the proposed critical habitat designation. Specifically, aquatic and upland areas where suitable breeding and nonbreeding habitat is interspersed throughout the landscape and is interconnected by unfragmented dispersal habitat are areas proposed as critical habitat. Proposed critical habitat is located in Alameda, Butte, Calaveras, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Marin, Mariposa, Merced, Monterey, Napa, Plumas, Riverside, San Benito, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Tehama, Tuolumne, Ventura, and Yuba counties, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

Proposed critical habitat does not include lands covered by any existing, legally operative, incidental take permits for the California red-legged frog issued under section 10(a)(1)(B) of the Act. The Habitat Conservation Plans (HCPs), required for issuance of these permits, provide for special management and protection under the terms of the permit and the lands covered by them are therefore not proposed for inclusion in the critical habitat. In areas where HCPs have not yet had permits issued, we have proposed critical habitat according to the factors outlined in this rule.

We solicit data and comments from the public on all aspects of this proposal, including data on economic

and other impacts of the designation and our approaches for handling HCPs. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will accept comments until October 11, 2000. We will hold four public hearings on this proposed rule scheduled for September 19, 21, 26, and 28, 2000. See the Public Hearing section below for details of location and time.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825.

2. You may also send comments by electronic mail (e-mail) to fw1crfch@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W. 2605, Sacramento, California 95825.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Curt McCasland or Brian Twedt, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W. 2605, Sacramento, California 95825 (telephone 916/414-6600; facsimile 916/414-6712).

For information about Monterey, Los Angeles, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura counties, contact Diane Noda, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2394 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644-1766; facsimile 805/644-3958).

For information about areas in the San Gabriel Mountains of Los Angeles County or Riverside and San Diego counties, contact Ken Berg, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 760/431-9440; facsimile 760/431-9624).

**SUPPLEMENTARY INFORMATION:****Background**

The California red-legged frog (*Rana aurora draytonii*) is the largest native frog in the western United States. It is endemic to California and Baja

California, Mexico. It is typically found from sea level to elevations of approximately 1,500 meters (m) (5,000 feet (ft)). The California red-legged frog ranges in body length from 40 to 130 millimeters (mm) (1.6 to 5.1 inches (in.)), with adult females attaining a significantly longer body length than males (138 mm (5.4 in.) versus 116 mm (4.6 in.)) (Hayes and Miyamoto 1984). The posterior abdomen and hind legs of adults vary in color, but are often red or salmon pink; the back is characterized by small black flecks and larger irregular dark blotches with indistinct outlines on a brown, gray, olive, or reddish-brown background color. Dorsal spots usually have light centers (Stebbins 1985), and the dorsolateral folds are prominent. Larvae range from 14 to 80 mm (0.6 to 3.1 in.) in length, and the background color of the body is dark brown or olive with darker spots (Storer 1925). A line of very small, indistinct gold-colored spots becomes the dorsolateral fold. The California red-legged frog is one of two subspecies of the red-legged frog (*R. aurora*). For a detailed description of the two subspecies see the Draft Recovery Plan for the California Red-legged Frog (Service 2000) and references within the plan.

Male California red-legged frogs appear at breeding sites 2 to 4 weeks before females (Storer 1925). A pair in amplexus (breeding position) moves to an oviposition site (the location where eggs are laid) and the eggs are fertilized while being attached to a brace. Braces include emergent vegetation such as bulrushes (*Scirpus* sp.), cattails (*Typha* sp.), or roots and twigs. Each mass contains about 2,000 to 5,000 individual eggs measuring approximately 2.0 to 2.8 mm (0.08 to 0.11 in.) in diameter. Eggs hatch in 6 to 14 days depending on water temperatures (Jennings *et al.* 1992). Larvae typically metamorphose between July and September, 3.5 to 7 months after eggs are laid (Storer 1925, Wright and Wright 1949). Of the various life stages, larvae probably experience the highest mortality rates. Survival rate from hatching to metamorphosis (the process of changing from a tadpole to a frog) has been estimated as less than 1 percent (Jennings *et al.* 1992), 1.9 percent (Cook 1997), or less than 5 percent (Lawler *et al.* 1999) for California red-legged frog tadpoles co-occurring with bullfrog tadpoles, and 30 to 40 percent for California red-legged frog tadpoles occurring without bullfrogs (Lawler *et al.* 1999). Sexual maturity can be attained at 2 years of age by males and 3 years of age by females (Jennings and Hayes 1985), with

adults living 8 to 10 years (M. Jennings, U.S. Geological Survey (USGS), Biological Resources Division (BRD), pers. comm. 2000). However, the average life span is probably much lower (N. Scott, USGS, BRD, pers. comm. 2000).

The historic range of the California red-legged frog extended along the coast from the vicinity of Point Reyes National Seashore, Marin County, California, and inland from the vicinity of Redding, Shasta County, California, southward to northwestern Baja California, Mexico (Jennings and Hayes 1985, Hayes and Krempels 1986). California red-legged frogs have been documented in 46 counties in California, but now remain in only 238 streams or drainages in 31 counties; the species has lost approximately 70 percent of its former range (Service 2000, 61 FR 25813). California red-legged frogs are still locally abundant within portions of the San Francisco Bay area (including Marin County) and the central coast. Within the remaining distribution of the species, only isolated populations have been documented in the Sierra Nevada, northern Coast, and northern Transverse ranges. The species is believed to be extirpated from the southern Transverse and Peninsular ranges, but is still present in Baja California, Mexico (California Natural Diversity Data Base 1998).

The California red-legged frog was listed as a threatened species on May 31, 1996 (61 FR 25813). Habitat loss and alteration, over-exploitation, and introduction of exotic predators were significant factors in the species' decline in the early-to mid-1900s. Reservoir construction, expansion of introduced predators, grazing, and prolonged drought fragmented and eliminated many of the Sierra Nevada foothill populations. Only a few drainages are currently known to support California red-legged frogs in the Sierra Nevada foothills, compared to more than 60 historical records. Several researchers have attributed the decline and extirpation of California red-legged frogs to the introduction of bullfrogs (*Rana catesbeiana*) and introduced predatory fishes (Hayes and Jennings 1986, Moyle 1973). This decline has been attributed to both predation and competition. Twedt (1993) observed the predation of juvenile northern red-legged frogs (*R. aurora aurora*) and suggested that bullfrogs may prey on subadult red-legged frogs. This is supported by Cook (Sonoma County Water Agency, *in litt.* 2000) and Cook and Jennings (*in litt.* 2000) who documented predation of both tadpoles and juvenile California red-legged frogs, as well as a large adult,

by bullfrogs. In addition, bullfrogs may have a competitive advantage over red-legged frogs; bullfrogs are larger, have more generalized food habits (Bury and Whelan 1984), have an extended breeding season (Storer 1933) where an individual female can produce as many as 20,000 eggs during a breeding season (Emlen 1977), and bullfrog larvae are unpalatable to predatory fish (Kruse and Francis 1977). In addition to competition, bullfrogs also interfere with red-legged frog reproduction. Both California and northern red-legged frogs have been observed in amplexus with (mounted on) both male and female bullfrogs (Twedt 1993, Service files).

California red-legged frogs are currently threatened by human activities, many of which operate concurrently and cumulatively with each other and with natural disturbances (e.g., droughts and floods). Current factors associated with declining populations of the frog include degradation and loss of its habitat through agriculture, urbanization, mining, overgrazing, recreation, timber harvesting, invasion of nonnative plants, impoundments, water diversions, degraded water quality, and introduced predators. These factors have resulted in the isolation and fragmentation of habitats within many watersheds, often precluding dispersal between subpopulations and jeopardizing the viability of metapopulations (broadly defined as multiple subpopulations that occasionally exchange individuals through dispersal, and are capable of colonizing or rescuing extinct habitat patches). The fragmentation of existing habitat and the continued colonization of existing habitat by nonnative species may represent the most significant current threats to California red-legged frogs; however, California red-legged frog populations are usually threatened by more than one factor.

Numerous studies have demonstrated the impacts of fragmentation on other frog and toad species. Urban populations of common frogs (*Rana temporaria*) were more genetically distinct than rural populations (Hitchins and Beebee 1997). Based on genetic analysis, Reh and Seitz (1990) found that highways effectively isolated *R. temporaria* populations. Kuhn (1987, in Reh and Seitz 1990) estimated that 24 to 40 cars per hour killed 50 percent of common toad (*Bufo bufo*) individuals migrating across a road, while Heine (1987, in Reh and Seitz 1990) found that 26 cars per hour could reduce the survival rate of toads crossing roads to zero. In addition, Fahrig *et al.* (1995) found a significant negative correlation

between traffic density and the density of anuran populations. Thus, roads are an important human-caused landscape component hindering amphibian movement and thereby fragmenting amphibian populations.

In addition to the fragmentation of habitat, upland impacts can have additional significant deleterious impacts on California red-legged frogs. Amphibian species richness (number of species in an area) is related to land use in the watersheds of Puget Sound, Washington (Richter and Azous 1995, 1997); species richness was significantly lower in watersheds where more than 40 percent of the land area was developed. This was attributed to increases in the total water level fluctuations within wetlands. Specifically, urbanization leads to higher peak flows and volumes resulting in increases in the magnitude, frequency, and duration of wetland and stream levels (Reinalt and Taylor 1997). Urbanization within the range of the California red-legged frog often results in similar effects on wetlands. Urbanization results in additional water sources into wetlands and stream courses associated with irrigation and home use activities, especially during the summer months. This often drastically alters the hydroperiod and converts intermittent streams and seasonal wetlands to perennial aquatic habitat. Such alteration allow exotic species such as bullfrogs and nonnative warm water fish species to invade the habitat and further affect California red-legged frog populations. California red-legged frogs are rarely found in areas where a large majority of the watershed has been developed (H.T. Harvey 1997, Service files).

In addition to the modification of hydroperiod, impacts within the watershed can also affect water and habitat quality. As watersheds are developed, the amount of impervious surface increases, resulting in an increase of sediments containing organic matter, pesticides and fertilizers, heavy metals such as hydrocarbons, and other debris into streams and wetlands (U.S. Environmental Protection Agency (EPA) 1993). Skinner *et al.* (1999) found developed watersheds had greater concentrations of toxic effluents than less developed areas with more open space. The decrease in water quality can have profound impacts on native amphibians and other wetland vertebrates. Richter and Azous (1997) observed wetlands adjacent to undeveloped upland areas were more likely to have richer populations of native amphibians. Mensing *et al.*

(1998) found that amphibian abundance was negatively influenced by land use at small scales (e.g., within 0.5 to 1.0 kilometers (km) (0.30 to 0.60 miles (mi))). Habitat fragmentation, wetland conversions, and hydrological alterations cumulatively result in changes in wetland species composition, including amphibians. Amphibian declines can be attributed to increasing numbers of nonnative competitors and predators capable of thriving in disturbed conditions (Harris 1998). Onorato *et al.* (1998) found native fish species were sensitive to anthropogenic disturbances and were becoming less abundant within the study area. They also found introduced generalists able to tolerate lower quality habitat and to replace native fish species within the system. This scenario has been demonstrated in the Santa Clara Valley, California, where the loss of California red-legged frog populations was attributed in part to the invasion of bullfrogs into urbanized areas (H.T. Harvey and Associates 1997).

California red-legged frogs are adapted to survive in a Mediterranean climate where habitat quality varies spatially and temporally. Due to this variability, population sizes can vary widely from year to year. During favorable years, California red-legged frogs can experience extremely high rates of reproduction and produce large numbers of dispersing young resulting in an increase in the number of occupied sites. In contrast, frogs may temporarily disappear from an area during periods of extended drought. Therefore, it is important for the long term survival and recovery of the species to protect those sites that appear to be unoccupied but can be recolonized by dispersing individuals from nearby sub-populations.

California red-legged frogs have been observed using a variety of habitat types, including various aquatic, riparian, and upland habitats. They include, but are not limited to, ephemeral ponds, intermittent streams, seasonal wetlands, springs, seeps, permanent ponds, perennial creeks, manmade aquatic features, marshes, dune ponds, lagoons, riparian corridors, blackberry (*Rubus sp.*) thickets, nonnative annual grasslands, and oak savannas. They are found in both natural and manmade aquatic habitats, and inhabit areas of diverse vegetation cover. Among the variety of habitats where California red-legged frogs have been found, the only common factor is association with a permanent water source. Apparently, California red-legged frogs can use virtually any aquatic system provided a permanent

water source, ideally free of nonnative predators, is nearby. Permanent water sources can include, but are not limited to, ponds, perennial creeks (or permanent plunge pools within intermittent creeks), seeps, and springs. California red-legged frogs may complete their entire life cycle in a particular area (i.e., a pond that is suitable for all life stages) or utilize multiple habitat types. These variable life history characteristics enable California red-legged frogs to change habitat use in response to varying conditions. During a period of abundant rainfall, the entire landscape may become suitable habitat. Conversely, habitat use may be drastically confined during periods of prolonged drought.

Populations of California red-legged frogs are most likely to persist where multiple breeding areas are within an assemblage of habitats used for dispersal (N. Scott and G. Rathbun *in litt.*, USGS, BRD, 1998), a trait typical of many frog and toad species (Laan and Verboom 1990, Reh and Seitz 1990, Mann *et al.* 1991, Sjogren-Gulve 1994, Griffiths 1997, Marsh *et al.* 1999). Breeding sites have been documented in a variety of aquatic habitats. Larvae, juveniles, and adult frogs have been observed inhabiting streams, creeks, ponds, marshes, sag ponds, deep pools and backwaters within streams and creeks, dune ponds, lagoons, estuaries, and artificial impoundments, such as stock ponds. Furthermore, breeding has been documented in these habitat types irrespective of vegetation cover. Frogs often successfully breed in artificial ponds with little or no emergent vegetation, and have been observed to successfully breed and inhabit stream reaches that are not cloaked in riparian vegetation. The importance of riparian vegetation for this species is not well understood. It is believed that riparian plant communities provide good foraging habitat due to the moisture and camouflage that occur within the community, as well as providing areas for dispersal and supporting pools and backwater aquatic areas for breeding. However, other factors are more likely to influence the suitability of aquatic breeding sites, such as the general lack of introduced aquatic predators.

California red-legged frogs often disperse from their breeding habitat to utilize various aquatic, riparian, and upland habitats in the summer. Frogs use a number of habitat features, including ponds, streams, marshes, boulders or rocks, organic debris such as downed trees or logs, industrial debris, and agricultural features, such as drains, watering troughs, or spring boxes. When riparian habitat is present, frogs spend

considerable time resting and feeding in the vegetation (Rathbun *in litt.* 2000). When riparian habitat is absent, frogs spend considerable time resting and feeding under rocks and ledges, both in and out of water (Tatarian, Sonoma State University, *in litt.* 2000). California red-legged frogs can also use small mammal burrows and moist leaf litter (Jennings and Hayes 1994). Stream channels with portions narrower and deeper than 46 cm (18 in.) may also provide habitat (61 FR 25813). This type of dispersal and habitat use is not observed in all California red-legged frogs, however, and is likely dependent on the year to year variations in climate and habitat suitability and varying requisites per life stage.

At any time of the year, adult California red-legged frogs may move from breeding sites. They can be encountered living within streams at distances exceeding 2.9 km (1.8 mi) from the breeding site and have been found further than 100 m (328 ft) from water in adjacent dense riparian vegetation. The subspecies has been observed inhabiting riparian areas for up to 77 days (Bulger *et al.*, USGS, BRD, *in litt.* 2000), but were typically within 60 m (200 ft) of water. During periods of wet weather, starting with the first rains of fall, some individuals may make overland excursions through upland habitats. Most of these overland movements occur at night. Evidence from marked adult frogs on the San Simeon coast of California suggests that frog movements of about 1.6 km (1 mi), via upland habitats, are possible over the course of a wet season (N. Scott and G. Rathbun, USGS, BRD, *in litt.* 1998). Frogs have been observed to make long-distance movements that are straight-line, point-to-point migrations rather than using corridors for moving in between habitats (N. Scott and G. Rathbun, USGS, BRD, *in litt.* 1998). Dispersing adult frogs in northern Santa Cruz County traveled distances from 0.4 km (0.25 mi) to more than 3.2 km (2 mi) without apparent regard to topography, vegetation type, or riparian corridors (J. Bulger *in litt.* 2000). Newly metamorphosed juveniles tend to disperse locally July through September and then disperse away from the breeding habitat during warm rain events (Jennings *in litt.* 2000, Scott *in litt.* 2000). The distances these juveniles are capable of traveling has not been studied, but are likely dependent upon rainfall and moisture levels during and immediately following dispersal events and on habitat availability and environmental variability. The ability of juveniles and adults to disperse is

important for the long term survival and recovery of the species as the dispersing individuals can recolonize areas subjected to localized extinctions.

The manner in which non-dispersing California red-legged frogs use upland habitats is not well understood. The length of time California red-legged frogs spend in upland habitats, patterns of use, and whether juveniles, subadults and adults use uplands differently are under study. Preliminary data from San Simeon and Pico creeks in central California indicated that the number of days when California red-legged frogs were found more than 2.0 m (7 ft) from water ranged from 0 to 56 days (Rathbun *in litt.* 2000), while the majority of California red-legged frogs observed in eastern Contra Costa County spent the entire wet season within streamside habitat (Tatarian *in litt.* 2000).

The healthiest California red-legged frog populations persist as a collection of subpopulations that exchange genetic information through individual dispersal events. These populations persist and flourish where suitable breeding and nonbreeding habitats are interspersed throughout the landscape and are interconnected by unfragmented dispersal habitat. Where this habitat mosaic exists, local extinctions may be counterbalanced by the colonization of new habitat or recolonization of unoccupied areas of suitable habitat. Studies on other frogs and toads have demonstrated that the probability of a habitat being occupied is positively correlated with the distance to the nearest currently occupied habitat patch (Laan and Verboom 1990, Mann *et al.* 1991, Marsh *et al.* 1999). Isolated patches far removed from occupied patches eventually go extinct (Sjogren-Gulve 1994). In addition to distance between habitat patches, the fragmentation of dispersal routes can also result in the isolation of subpopulations. Studies from other anuran species have shown that fragmentation has resulted in problems associated with inbreeding (Reh and Seitz 1990, Hitchings and Beebe 1997) and an increase in unoccupied suitable habitat, and can ultimately result in extinction (Sjogren-Gulve 1994). Thus, connectivity is essential for the long term survival and recovery of California red-legged frogs.

#### Previous Federal Action

We received a petition from Drs. Mark R. Jennings, Marc P. Hayes, and Dan Holland on January 29, 1992, to list the California red-legged frog as threatened along the coastal portion of its range and endangered throughout the remaining portion of its range. A 90-day petition

finding (57 FR 45761) was published on October 5, 1992, that concluded that substantial information had been presented and that listing the subspecies may be warranted. The California red-legged frog had been previously included in our November 21, 1991, Animal Notice of Review (56 FR 58804) as a category 1 candidate species. Category 1 candidates (now known simply as candidates) are species for which we have sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. On July 19, 1993, we published a 12-month finding on the petitioned action (58 FR 38553), indicating that listing of the frog was warranted and that a proposed rule would be published. We published a proposal to list the frog as an endangered species on February 2, 1994 (59 FR 4888). Based on information provided during the public comment period, we published a final rule listing the frog as threatened on May 23, 1996 (61 FR 25813).

We did not propose to designate critical habitat for the California red-legged frog within the proposed or final listing rule because we believed designation was not prudent. Since California red-legged frogs are found on private property, we determined the frog was at risk from vandalism, and that publication of specific localities would make the species more vulnerable to vandalism, as well as collection for market consumption.

On March 24, 1999, The Earthjustice Legal Defense Fund, on behalf of the Jumping Frog Research Institute, the Southwest Center for Biological Diversity, and the Center for Sierra Nevada Conservation, filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for the California red-legged frog (*Jumping Frog Research Institute et al. v. Babbitt*).

On December 15, 1999, U.S. District Judge William Alsup ordered us to make a prudency determination by August 31, 2000, and issue a final rule by December 29, 2001. On January 18, 2000, Judge Alsup clarified an error in the December 15, 1999, order stating that the Service shall issue a final rule by December 29, 2000. Publication of this proposed rule is consistent with that decision.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in

accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection, and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as

engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical (50 CFR 402.02).

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, and prescribe specific management actions (inside or outside of critical habitat). Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits.

#### Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available, and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, and other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; protection from disturbance; and habitats that are representative of the historic geographical and ecological distributions of a species.

Due to the complex life history and dispersal capabilities of the California red-legged frog, and the dynamic nature of the environment in which they are found, the primary constituent elements described below are found throughout the watersheds that are being proposed as critical habitat. Habitat rehabilitation efforts (e.g., removal of non-native predators) may be necessary in some areas, as well as changes in current management activities, to attain optimal distribution of California red-legged frogs within each critical habitat unit. Critical habitat for California red-legged frogs, as currently proposed, will provide for breeding and nonbreeding habitat and for dispersal between these habitats, as well as allowing for expansion of California red-legged frog

populations, which is vital to the recovery of the species.

The primary constituent elements of critical habitat for California red-legged frogs are: (a) Suitable aquatic habitat; (b) associated uplands; and (c) suitable dispersal habitat connecting suitable aquatic habitat.

Suitable aquatic habitat is essential for providing space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, nonbreeding subadults, and breeding and nonbreeding adult frogs. Suitable aquatic habitat for California red-legged frogs consists of virtually all still or slow-moving fresh water bodies, including natural and manmade (e.g., stock) ponds, backwaters within streams and creeks, marshes, lagoons, and dune ponds, except deep lacustrine water habitat (e.g., deep lakes and reservoirs) inhabited by nonnative predators. The species requires a permanent water source to ensure that aquatic habitat is available year-round. Permanent water sources can include, but are not limited to, ponds, perennial creeks (or permanent plunge pools within intermittent creeks), seeps, and springs. Aquatic habitat used for breeding must have a minimum deep water depth of 20 cm (8 in.), and maintain water during the entire tadpole rearing season (at least March through July). During periods of drought or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but these sites would still be considered suitable breeding habitat. To be considered a critical habitat, the aquatic component must consist of two or more breeding sites located within 2 km (1.25 mi) of each other, if at least one of the sites is also a permanent water source, or two or more breeding sites and a permanent water source located within 2 km (1.25 mi), if the breeding sites are not permanent water sources. In addition, the sites must be connected by suitable dispersal habitat, described below.

Associated uplands are essential to maintain the integrity of California red-legged frog aquatic habitat, by providing the conditions essential for providing food, water, nutrients, and protection from disturbance necessary for normal behavior, and provide shelter to frogs inhabiting upland areas adjacent to suitable aquatic habitat. Key conditions include the timing, duration, and extent of water moving within the system, filtering capacity, and maintaining the habitat to favor California red-legged frogs and discourage the colonization of exotic species such as bullfrogs. Suitable upland habitat consists of all upland areas within 150 m (500 ft), or

no further than the watershed boundary, of the edge of suitable aquatic habitat.

Suitable dispersal habitat provides connectivity among California red-legged frog aquatic habitat (and associated upland) patches. While frogs can pass many obstacles, and do not require a particular type of habitat for dispersal, the habitat connecting suitable breeding locations and other aquatic habitat must be free of barriers and at least 150 m (500 ft) wide. Suitable dispersal habitat consists of all upland and wetland habitat free of barriers that connects two or more patches of suitable aquatic habitat within 2 km (1.25 miles) of one another. Dispersal barriers include heavily traveled roads (with more than 30 cars per hour), moderate to high density urban or industrial developments, and large reservoirs. Areas where barriers to dispersal occur would not be considered critical habitat. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to California red-legged frog dispersal.

In summary, the primary constituent elements consist of three components. At a minimum, this will include two (or more) suitable breeding locations, a permanent water source, associated uplands surrounding these water bodies up to 150 m (500 ft) from the water's edge, all within 2 km (1.25) miles of one another and connected by barrier-free dispersal habitat that is at least 150 m (500 ft) in width. When these elements are all present, all other suitable aquatic habitat within 2 km (1.25 mi), and free of dispersal barriers, is also considered critical habitat.

#### Criteria Used To Identify Critical Habitat

As stated previously, California red-legged frogs use a variety of aquatic habitats. These habitats include, but are not limited to, ephemeral ponds, intermittent streams, seasonal wetlands, springs, seeps, permanent ponds, perennial creeks, manmade aquatic features (e.g., stock ponds), marshes, dune ponds, and lagoons. California red-legged frogs are found in both natural and manmade aquatic habitats and inhabit areas irrespective of vegetation cover; therefore, virtually any aquatic system can be utilized if a permanent water source is nearby.

The long-term probability of the survival and recovery of California red-legged frogs is dependant upon the protection of existing breeding habitat, the movements of individuals between aquatic patches, and the ability to recolonize newly created or vacated habitats. Recolonization, which is vital to the recovery of the species, is

dependent upon landscape characteristics including the distance between patches, the number and severity of barriers between patches, and the presence of interconnecting elements (e.g., habitat where frogs can rehydrate), and upon the dispersal capability of California red-legged frogs (Laan and Verboom 1990). California red-legged frogs have been documented to travel 3.6 km (2.25 mi) in a virtual straight line migration from nonbreeding to breeding habitats (Bulger, *in litt.* 2000). We believe that this is likely the upward limit of dispersal capability, and that the proposed 2 km (1.25 mi) dispersal element will ensure that connectivity between breeding habitats will be maintained within areas proposed as critical habitat, thus allowing these areas to persist as, or develop into, viable metapopulations. The largest known populations of California red-legged frogs exist as subpopulations with several breeding habitats located within 2 km of each other (Service files).

The areas we are proposing to designate as critical habitat currently provide all of those habitat components essential for the primary biological needs of California red-legged frogs as described in the draft recovery plan and defined by the primary constituent elements. We did not include all areas currently occupied by California red-legged frogs, but propose those areas that possess a large population of frogs, represent unique ecological characteristics, or represent historic geographic areas where California red-legged frogs can be reestablished. Ponds that support a small population of California red-legged frogs (*i.e.*, provide all of the requirements for the aquatic primary constituent element), but are not surrounded by suitable upland habitat or are cut off from other breeding ponds or permanent water sources by impassible dispersal barriers, would not be considered critical habitat.

In designating critical habitat for the California red-legged frog, we have reviewed the overall approach to the conservation of the California red-legged frog undertaken by the local, State, Tribal and Federal agencies operating within the species' range since its listing in 1996. Based on this review and current literature, we considered several criteria in the selection and proposal of specific boundaries for California red-legged frog critical habitat. Such criteria focused on designating units (1) throughout the geographic and elevational range of the species; (2) that would result in protecting populations that are geographically distributed in a manner that allows for the continued

existence of viable metapopulations despite fluctuations in the status of subpopulations; and (3) that possess large continuous blocks of occupied habitat, representing source populations and/or unique ecological characteristics, or areas where California red-legged frogs can be reestablished which is essential to the recovery of the species. This task was accomplished by first determining the occupancy status of areas. Areas were considered to possess extant populations if California red-legged frogs have been documented in that area since 1985. We then selected areas that are inhabited by populations (source populations) that are capable of maintaining their current population levels and capable of providing individuals to recruit into subpopulations found in adjacent areas. We also selected several areas that lack source populations, but represent areas with unique ecological significance. These areas include extant populations found on the periphery of the current range, both extant and extirpated areas that represent the historic distribution of the species, and areas that provide connectivity among source populations or between source populations and unoccupied extirpated areas. Of the approximate 2,175,000 ha (5,373,650 ac) that is designated as critical habitat, only around 17 percent (311,600 ha (769,900 ac)) is considered unoccupied habitat. Ninety percent of this unoccupied habitat (279,500 ha (690,600 ac)) occurs on Federal lands; the remaining 10 percent is primarily privately owned lands that are inholdings surrounded by Federal lands. Both unoccupied and occupied areas not included in this designation can still be targets for recovery actions, including reestablishing populations. Furthermore, California red-legged frogs in areas not included in this designation are still afforded the protections of a threatened species under the Act.

The proposed designation of 150 m (500 ft) of upland habitat surrounding aquatic habitat is based in part on the work of Bulger *et al.* (*in litt.* 2000), who found that frogs were capable of inhabiting upland habitats within 60 m (200 feet) of aquatic habitat for continuous durations exceeding 20 days, and Rathbun (*in litt.* 2000), who observed frogs inhabiting riparian habitat for durations exceeding 30 days. In addition to the occupation of upland habitat, the surrounding watershed plays an important role in the health and integrity of the aquatic habitat. The 150 m (500 ft) upland habitat designation will help minimize changes in frequency, duration, and timing of

the wetland hydroperiod, minimize the input of toxic sediments, and help maintain connectivity between habitats. It will also further minimize the creation of habitat conditions found to favor exotic species and/or urban adapted predators (Mensing *et al.* 1998, Onorato *et al.* 1998, H.T. Harvey and Associates 1997, Richter and Azous 1997, Jennings and Hayes 1994, Hayes and Jennings 1986). The 150 m (500 ft) upland habitat designation will ensure California red-legged frogs continue to exist within the watershed in multiple breeding areas embedded within a matrix of dispersal habitats.

## Methods

The proposed critical habitat units were delineated by first creating data layers in a geographic information system (GIS) format of all of the core areas as proposed in the recovery plan. We then used the California Watershed Map (CALWATER version 2.2), a coverage developed by California Department of Water Resources (DWR), to delineate boundaries in a 1:240,000 format. CALWATER is a set of watershed boundaries meeting standardized delineation criteria, consisting of six levels of increasing specificity, with the primary purpose of assigning a single, unique code to a specific watershed polygon (e.g., a planning watershed). CALWATER delineates the boundaries of planning watersheds 1,200 to 4,000 ha (3,000 to 10,000 ac) in size. We used these planning watersheds as the minimum mapping unit to delineate critical habitat units because they represent functional management units that affect the quality of aquatic habitat and thus are extremely relevant to amphibian populations. The use of planning watersheds also allowed us to delineate critical habitat that protects habitat quality, breeding and nonbreeding habitat, and dispersal habitat in a manner consistent with the overall goal of protecting and promoting metapopulations. We selected all of the planning watersheds that intersected areas of high California red-legged frog abundance, areas essential to maintain connectivity, and/or areas of unique ecological significance. In areas where planning watersheds were large and/or watersheds were significantly altered hydrologically, we used alternative structural, political, or topographic boundaries (e.g., roads, county boundaries, elevation contour lines) as critical habitat boundaries because in these areas the benefits of using planning watersheds were limited. In addition, we used digital data, as well as hard copy maps, from the National

Wetlands Inventory (NWI), which provides information on the characteristics, extent, and status of the nation's wetlands and deepwater habitats.

When initially drafting this proposed rule, we investigated using digital data from the NWI. We planned to use these data to more precisely map those areas that possess the primary constituent elements. However, not all of the pertinent NWI maps had been digitized and we lacked the time necessary to acquire the data. Even though the data are not digitally available, they are available on 1:124,000 scale maps. These maps can be used to determine where patches of suitable breeding and other aquatic habitat exist within a matrix of dispersal habitat and thus delineate critical habitat areas. Using this information allows for identification of areas possessing the primary constituent elements associated with aquatic and dispersal habitats and to identify areas containing, or capable of supporting, viable metapopulations. Hard copies of the NWI maps can be viewed at any of our field offices, and are also available for purchase from the USGS, Menlo Park-ESIC, Building 3, MS 532, Rm. 3128, 345 Middlefield Road, Menlo Park, California 94025-3591.

We could not depend solely on federally owned lands for proposed critical habitat designation as these lands are limited in geographic location, size, and habitat quality. In addition to the federally owned lands, we are proposing to designate critical habitat on non-Federal public lands and privately owned lands, including land owned by the California Department of Parks and Recreation, the California Department of Fish and Game, DWR, and the University of California, as well as regional and local park lands and water district lands. Areas proposed as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical area occupied by the species, are essential to the conservation of the species, and are in need of special management considerations or

protection. We also propose areas that are outside the current distribution of the species, but are essential for the conservation of the species (e.g., recovery).

We also considered the existing status of non-Federal and private lands in proposing areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Non-Federal and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) for California red-legged frogs under section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and are therefore not being proposed for inclusion in critical habitat as discussed in section 3(5) of the Act.

We considered, and are proposing, portions of the Santa Ynez Band of the Chumash Mission Indian Reservation because we believe that riparian and adjoining upland areas on Tribal lands may be essential to the conservation of California red-legged frogs. However, the short amount of time allowed to propose critical habitat precluded us from adequately coordinating with the Tribe. Subsequent to this proposal, we will consult with the Tribe before making a final determination as to whether any Tribal lands should be included as critical habitat for California red-legged frogs. We will consider whether these Tribal lands require special management considerations or protection. We may also exclude some or all of these lands from critical habitat upon a determination that the benefits of excluding them outweighs the benefits of designating these areas as critical habitat, as provided under section 4(b)(2) of the Act. This consultation will take place under the auspices of the Presidential

Memorandum of April 29, 1994, which require us to coordinate with federally recognized Tribes on a Government-to-Government basis.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to California red-legged frog conservation. However, we did not map critical habitat in sufficient detail to exclude all developed areas, such as towns or housing developments, or other lands unlikely to contain the primary constituent elements essential for conservation of the California red-legged frog. Areas of existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas, and uplands removed from suitable aquatic and dispersal habitat, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, the proposed critical habitat areas described below constitute our best assessment of areas needed for the species' conservation and recovery.

#### Proposed Critical Habitat Designation

Table 1 shows the approximate acreage of proposed critical habitat by county and land ownership. Critical habitat proposed for the California red-legged frog includes approximately 2,175,000 ha (5,373,650 ac) in Alameda, Butte, Calaveras, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Marin, Mariposa, Merced, Monterey, Napa, Plumas, Riverside, San Benito, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Tehama, Tuolumne, Ventura, and Yuba counties, California (see Map 1 in the Proposed Regulation Promulgation section).

TABLE 1.—APPROXIMATE AREA ENCOMPASSING PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

County	Federal land	Local/State land	Private land	Total
Plumas .....	57,500 ha (141,100 ac)	NA	8,200 ha (20,250 ac)	65,700 ha (162,350 ac)
Butte .....	19,000 ha (47,000 ac)	100 ha (250 ac)	11,700 ha (28,900 ac)	30,800 ha (76,150 ac)
Sierra .....	1,400 ha (3,450 ac)	NA	300 ha (750 ac)	1,700 ha (4,200 ac)
Yuba .....	3,800 ha (9,400 ac)	NA	2,800 ha (6,900 ac)	6,600 ha (16,300 ac)

TABLE 1.—APPROXIMATE AREA ENCOMPASSING PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP—Continued

County	Federal land	Local/State land	Private land	Total
El Dorado .....	20,200 ha (49,900 ac)	NA	17,200 ha (42,500 ac)	37,400 ha (92,400 ac)
Calaveras .....	1,500 ha (3,700 ac)	NA	2,900 ha (7,150 ac)	4,400 ha (10,850 ac)
Tuolumne .....	172,300 ha (425,750 ac)	200 ha (500 ac)	14,600 ha (36,100 ac)	187,100 ha (462,350 ac)
Mariposa .....	1,400 ha (3,450 ac)	NA	400 ha (1,000 ac)	1,800 ha (4,450 ac)
Tehama .....	24,600 ha (60,800 ac)	300 ha (750 ac)	23,500 ha (58,100 ac)	48,400 ha (119,650 ac)
Napa .....	2,500 ha (6,200 ac)	1,000 ha (2,500 ac)	20,800 ha (51,400 ac)	24,300 ha (60,100 ac)
Sonoma .....	NA	1,800 ha (4,450 ac)	12,600 ha (31,150 ac)	14,400 ha (35,600 ac)
Solano .....	700 ha (1,750 ac)	200 ha (500 ac)	14,700 ha (35,100 ac)	15,100 ha (37,350 ac)
Marin .....	30,700 ha (75,850 ac)	13,600 ha (33,600 ac)	43,100 ha (106,500 ac)	87,400 ha (215,950 ac)
Alameda .....	600 ha (1,500 ac)	2,500 ha (6,200 ac)	105,500 ha (260,700 ac)	108,600 ha (268,400 ac)
Contra Costa .....	400 ha (1,000 ac)	7,600 ha (18,800 ac)	57,000 ha (140,850 ac)	65,000 ha (160,650 ac)
Santa Clara .....	300 ha (750 ac)	15,700 ha (38,800 ac)	73,800 ha (182,350 ac)	89,800 ha (221,900 ac)
San Joaquin .....	NA	NA	11,700 ha (28,900 ac)	11,700 ha (28,900 ac)
Stanislaus .....	NA	10,900 ha (26,950 ac)	6,100 ha (15,100 ac)	17,000 ha (42,050 ac)
Merced .....	900 ha (2,200 ac)	9,700 ha (24,000 ac)	65,800 ha (162,600 ac)	76,400 ha (188,800 ac)
Fresno .....	9,000 ha (22,250 ac)	NA	1,400 ha (3,450 ac)	10,400 ha (25,700 ac)
San Benito .....	11,800 ha (29,150 ac)	NA	105,000 ha (259,450 ac)	116,800 ha (288,600 ac)
San Mateo .....	700 ha (1,750 ac)	12,200 ha (30,150 ac)	98,900 ha (244,400 ac)	111,800 ha (276,300 ac)
Santa Cruz .....	100 ha (250 ac)	10,700 ha (26,450 ac)	40,600 ha (100,300 ac)	51,400 ha (127,000 ac)
Monterey .....	16,400 ha (40,500 ac)	6,700 ha (16,550 ac)	137,200 ha (339,000 ac)	160,300 ha (396,050 ac)
San Luis Obispo .....	11,300 ha (27,900 ac)	2,700 ha (6,650 ac)	214,100 ha (529,050 ac)	228,100 ha (563,600 ac)
Kern .....	700 ha (1,750 ac)	NA	12,300 ha (30,400 ac)	13,000 ha (32,150 ac)
Santa Barbara .....	119,600 ha (295,550 ac)	1,200 ha (2,950 ac)	145,900 ha (360,500 ac)	266,700 ha (659,000 ac)
Ventura .....	125,900 ha (311,100 ac)	100 ha (250 ac)	11,600 ha (28,650 ac)	137,600 ha (340,000 ac)
Los Angeles .....	90,300 ha (223,150 ac)	5,300 ha (13,100 ac)	64,700 ha (159,850 ac)	160,300 ha (396,100 ac)
Riverside .....	12,100 ha (29,900 ac)	1,100 ha (2,700 ac)	6,900 ha (17,050 ac)	20,100 ha (49,650 ac)
San Diego .....	4,500 ha (11,100 ac)	NA	400 ha (1,000 ac)	4,900 ha (12,100 ac)
Total .....	740,200 ha (1,829,150 ac)	103,600 ha (256,100 ac)	1,331,200 ha (3,288,400 ac)	2,175,000 ha (5,373,650 ac)

A brief description of each critical habitat unit is given below:

*Unit 1. North Fork Feather Unit*

Unit 1 consists of drainages found within the North Fork Feather River drainage, including watersheds within Bucks Creek, Grizzly Creek, Mayoro Creek, Rock Creek, Three Lakes, and Lower Yellow Creek. The unit

encompasses approximately 81,930 ha (202,450 ac). The North Fork Feather unit is the northeastern-most unit of the proposed critical habitat units. This unit is located in Plumas and Butte counties. Approximately 86 percent of the unit consists of Federal lands managed by Plumas and Lassen National Forests,

and the majority of the remaining area is privately owned.

*Unit 2. South Fork Feather-Indian Creek Unit*

Unit 2 consists of drainages found within the South Fork Feather River and the Yuba River watersheds found in Butte, Plumas, Yuba, and Sierra counties. Watersheds that drain into the

South Fork Feather River include Lewis Flat, Oroleve Creek, and Rock Creek; watersheds that flow into the Yuba River include Indian Creek, Brushy Creek, and Gold Run. The unit encompasses approximately 23,000 ha (56,840 ac). Approximately 50 percent of this unit is managed by Plumas National Forest; the remainder is mostly privately owned.

#### *Unit 3. Weber Creek-Cosumnes Unit*

Unit 3 consists of drainages in the Weber Creek and North Fork Cosumnes River watersheds in El Dorado County. The Ringold Creek, South Fork Weber Creek, North Fork Weber Creek, and China Creek drainages form the Weber Creek portion of this unit. Drainages that form the North Fork Cosumnes portion include Clear Creek, North Steely Creek, Jenkinson Lake, Headwaters Camp Creek, Snow Creek, North Canyon, Van Horn Creek, Capps Crossing, Leek Spring Valley, Hazel Creek, and North Sly Park Creek. The unit encompasses approximately 37,400 ha (92,400 ac), of which 54 percent is within the El Dorado National Forest and 46 percent is privately owned.

#### *Unit 4. South Fork Calaveras River Unit*

Unit 4 consists of the Lower O'Neil Creek, Dirty Gulch, Old Gulch, Middle San Antonio Creek, Indian Creek, and Upper San Domingo Creek watersheds in Calaveras County. The unit encompasses approximately 4,410 ha (10,910 ac); 65 percent of this unit is in private ownership, and 35 percent is managed by the Bureau of Land Management (BLM).

#### *Unit 5. Yosemite Unit*

Unit 5 consists of drainages found in the tributaries of the Tuolumne River and Jordan Creek, a tributary to the Merced River, in Tuolumne and Mariposa counties. The unit encompasses approximately 188,970 ha (466,940 ac), of which 92 percent is managed by Stanislaus National Forest or the National Park Service (NPS); the majority of the remaining 8 percent is privately owned.

#### *Unit 6. Headwaters of Cottonwood Creek Unit*

Unit 6 consists of drainages found within the headwaters of Cottonwood and Red Bank creeks in Tehama County. The unit consists of the watersheds that form Bear Gulch, Long Gulch, Maple Creek, Cracker Canyon, Panther Gulch, Buck Creek, Devils Hole Gulch, Elkhorn Creek, Slides Creek, Buck Creek, Harvey Creek, and Sulphur Creek in the Cottonwood Creek drainage, and the watersheds that form Jackass Canyon,

Little Grizzly Creek, Sunflower Gulch, Red Bank Creek, and Alder Creek in the Red Bank Creek drainage. The unit encompasses approximately 48,400 ha (119,600 ac), of which approximately 51 percent is within the boundaries of the Mendocino National Forest; the majority of the remaining 48 percent is privately owned.

#### *Unit 7. Cleary Preserve Unit*

Unit 7 consists of drainages found within the watersheds that form the tributaries to Pope Creek in Napa County. The unit encompasses approximately 14,280 ha (35,280 ac), of which approximately 89 percent is privately owned; the remaining 11 percent is managed by Federal or State agencies.

#### *Unit 8. Annadel State Park Preserve Unit*

Unit 8 consists of the Upper Sonoma Creek watershed found partially within Annadel State Park in Sonoma County. The unit encompasses approximately 4,910 ha (12,130 ac), of which approximately 86 percent is privately owned and 14 percent is managed by the California Department of Parks and Recreation (CDPR).

#### *Unit 9. Stebbins Cold Canyon Preserve Unit*

Unit 9 consists of drainages found within and adjacent to Stebbins Cold Canyon Preserve and the Quail Ridge Wilderness Preserve in Napa and Solano counties. The unit is comprised of watersheds that form Capell Creek, including Wragg Canyon, Markley Canyon, Steel Canyon, and the Wild Horse Canyon watershed. The unit encompasses approximately 9,250 ha (22,860 ac), of which approximately 71 percent is privately owned and 29 percent is managed by the University of California Natural Reserve System (UCNRS), the Quail Ridge Wilderness Conservancy, and the BLM.

#### *Unit 10. Sears Point Unit*

Unit 10 consists of Stage Gulch and Lower Petaluma River watersheds, tributaries to the Petaluma River. This unit is located in and adjacent to Sears Point in Sonoma and Marin counties and encompasses approximately 9,940 ha (24,570 ac), of which 86 percent is privately owned, and the remaining 14 percent is managed by State and local governments.

#### *Unit 11. American Canyon Unit*

Unit 11 consists of watersheds within and adjacent to American Canyon Creek and Sulphur Springs Creek in Napa and Solano counties. Watersheds within this

unit include Fagan Creek, a tributary to the Napa River, the Jameson Canyon watershed, and the Sky Valley and Pine Lake watersheds that flow into Lake Herman. The unit encompasses approximately 15,780 ha (39,000 ac), of which 99 percent is privately owned.

#### *Unit 12. Point Reyes Unit*

Unit 12 consists of watersheds within and adjacent to Bolinas Lagoon, Point Reyes, and Tomales Bay in Marin and Sonoma counties. This unit encompasses approximately 84,520 ha (208,840 ac); 52 percent is managed by the NPS, CDPR, and the Marin Municipal Water District and 48 percent is privately owned.

#### *Unit 13. Tiburon Peninsula Unit*

Unit 13 consists of the Belvedere Lagoon watershed within and adjacent to the Tiburon Peninsula in Marin County. The unit encompasses approximately 2,560 ha (6,320 ac), of which 85 percent is privately owned; the remaining 15 percent is managed by State and local governments.

#### *Unit 14. San Mateo-Northern Santa Cruz Unit*

Unit 14 consists of coastal watersheds within San Mateo County and Northern Santa Cruz County that drain into the Pacific Ocean, and tributaries that form the watersheds of Pescadero Creek, San Gregorio Creek, San Mateo Creek, and Corte Madera Creek in San Mateo, Santa Clara, and Santa Cruz counties. The unit encompasses approximately 131,230 ha (324,280 ac), of which 85 percent is privately owned; the remaining 15 percent is primarily managed by the San Francisco Public Utilities District (SFPUD) and CDPR.

#### *Unit 15. East Bay-Diablo Range Unit*

Unit 15 consists of tributaries of San Lorenzo Creek, Alameda Creek, Kellogg Creek, Marsh Creek, Corral Hollow Creek, Orestimba Creek, Coyote Creek, Pacheco Creek, Romero Creek, Ortigalita Creek, Los Banos Creek, Panoche Creek, and the San Benito River in Contra Costa, Alameda, San Joaquin, Santa Clara, Stanislaus, San Benito, Merced, and Fresno counties. The unit encompasses approximately 456,930 ha (1,129,050 ac), of which 86 percent is privately owned; the remaining 14 percent is managed in part by East Bay Regional Park District, East Bay Municipal Utilities District, USBR, Department of Energy, Department of Defense (DOD), CDPR, SFPUD, CDFG, Santa Clara Valley Water District, and DWR.

*Unit 16. Pajaro River Unit*

Unit 16 consists of portions of two watersheds that are part of the Pajaro River Drainage, the Flint Hills watershed in San Benito County and the Santa Clara Valley watershed in Santa Clara and San Benito counties. This unit provides a link between the inner and outer Coast ranges (units 15 and 17). The unit encompasses approximately 20,400 ha (50,400 ac) and is all privately owned.

*Unit 17. Elkhorn Slough-Salinas River Unit*

Unit 17 consists of coastal drainages of southern Santa Cruz County, including Aptos, Soquel, Hinckley, and Bates creeks; Elkhorn Slough, and the watersheds that form its tributaries; and the watersheds of the lower Pajaro River, including Sargent Creek, Corralitos Lagoon, Soda Lake, and the Mouth of the Pajaro River. The unit is located in Santa Cruz, Monterey, and San Benito counties. The unit encompasses approximately 76,950 ha (190,140 ac), of which 93 percent is privately owned; the remaining 7 percent is managed by CDPR and the Elkhorn Slough National Estuarine Research Reserve.

*Unit 18. Carmel River Unit*

Unit 18 consists of drainages comprising the Carmel River watersheds in Monterey County. This unit encompasses approximately 65,310 ha (161,380 ac), of which approximately 32 percent of the land is managed by the Los Padres National Forest and CDPR, while the remaining 68 percent is privately owned.

*Unit 19. The Pinnacles Unit*

Unit 19 consists of two watersheds, Gloria Lake and George Hansen Canyon, in San Benito and Monterey counties. This unit encompasses approximately 11,470 ha (28,330 ac), of which 56 percent is managed by the NPS and BLM; the remaining 44 is privately owned.

*Unit 20. Estrella River/Cholame Creek Unit*

Unit 20 consists of the drainages comprising the Cholame Creek, Estrella River, and the Saw Tooth Ridge watersheds in Monterey, San Luis Obispo and Kern counties. The unit encompasses approximately 161,600 ha (399,310 ac), of which 99 percent is privately owned and the remaining 1 percent is federally managed.

*Unit 21. San Simeon Unit-Morro Bay Unit*

Unit 21 consists of the coastal watersheds of San Luis Obispo County from Arroyo de la Cruz south to Los Osos Creek. The unit encompasses approximately 92,690 (229,030 ac), of which 94 percent is privately owned; the remaining 6 percent is managed by CDPR and Federal agencies.

*Unit 22. Lopez Lake-Arroyo Grande Creek Unit*

Unit 22 consists of the watersheds of Arroyo Grande Creek and its tributaries; these include Los Berros Creek, Tarspring Creek, Guaya Canyon, Carpenter Canyon, Wittenberg Creek, Clapboard Canyon, Vasquez Creek, Big Falls Canyon, Nipomo Mesa, and Cienega Valley in San Luis Obispo County. The unit encompasses approximately 36,160 ha (89,350 ac), of which 80 percent is privately owned and the remaining 20 percent is managed by Los Padres National Forest and BLM.

*Unit 23. Coastal Dunes Unit*

Unit 23 consists of coastal watersheds comprising the coastal dune ponds from Arroyo Grande south to San Antonio Creek in San Luis Obispo and Santa Barbara counties. The unit encompasses approximately 43,810 ha (108,250 ac), of which 49 percent is managed by Federal, State, and local municipalities (primarily DOD and CDPR), with the remaining 51 percent in private ownership.

*Unit 24. Santa Ynez River Unit*

Unit 24 consists of watersheds forming the Santa Ynez River in Santa Barbara County. The unit encompasses approximately 117,070 ha (289,270 ac), of which approximately 59 percent is privately owned; the remaining 41 percent is managed by the Bureau of Reclamation (BOR) and Los Padres National Forest.

*Unit 25. Sisquoc River Unit*

Unit 25 consists of watersheds forming the drainages of the Sisquoc River in Santa Barbara County. These include the Cherokee Spring, Ernest Blanco Spring, Horse Canyon, La Brea Creek, Manzano Creek, Peach Tree Spring, and the Lower Sisquoc River watersheds. The unit encompasses approximately 55,260 ha (136,550 ac), of which 45 percent is privately owned, and 55 percent is managed by the Los Padres National Forest.

*Unit 26. Coastal Santa Barbara Unit*

Unit 26 consists of coastal tributaries including the Bear Creek watershed,

east to and including the Ellwood Canyon watershed in Santa Barbara County. The unit encompasses approximately 56,440 ha (139,470 ac), of which 36 percent is managed by the Los Padres National Forest and the CDPR; the remaining 64 percent is privately owned.

*Unit 27. Matilija-Sespe-Piru Creek Unit*

This unit consists of watersheds that comprise portions of the Matilija, Sespe, and Piru Creek drainages in Santa Barbara, Ventura, and Los Angeles counties. The unit encompasses approximately 149,750 ha (370,030 ac), of which 96 percent is managed by the Los Padres National Forest and 4 percent is privately owned.

*Unit 28. San Francisquito-Amargosa Creek Unit*

This unit consists of the drainages that consist of San Francisquito and Amargosa Creeks in Los Angeles County, including all or parts of the Lancaster, Rock Creek, Acton, Bouquet Eastern, Mint Canyon, and Sierra Pelona watersheds. The unit encompasses approximately 83,760 ha (206,960 ac), of which 55 percent is privately owned; the remaining 45 percent is primarily managed by the Angeles National Forest.

*Unit 29. Malibu Coastal Unit*

This unit consists of the upper coastal watersheds in Ventura and Los Angeles counties that drain into the Pacific Ocean near Malibu, including the West La Virgenes Canyon, Lindero Canyon, Sherwood, Triunfo Canyon, East La Virgenes Canyon, and Monte Nido watersheds. The unit encompasses approximately 29,960 ha (74,030 ac), of which approximately 77 percent is privately owned and 23 percent is managed in part by the NPS, CDPR, and local municipalities.

*Unit 30. Santa Rosa Plateau/Santa Ana Mountains Unit*

This unit includes portions of the Santa Rosa Plateau Ecological Reserve, the Santa Rosa Plateau, and the southern extent of the Santa Ana Mountains in Riverside and San Diego counties, including portions of Deluz Creek, Murrieta, and San Mateo Canyon watersheds. The unit encompasses approximately 25,000 ha (61,770 ac), of which approximately 66 percent is managed by the U.S. Forest Service (Forest Service); approximately 30 percent is privately owned (a portion of which is owned by The Nature Conservancy); and the remaining 4 percent is managed by the State of California.

### *Unit 31. Tujunga Unit*

This unit consists of portions of the Tujunga watershed in Los Angeles County. The unit encompasses approximately 36,290 ha (89,660 ac), of which approximately 91 percent is managed by the Forest Service, 6 percent is privately owned, and the remaining 3 percent is managed by the State of California.

### **Effects of Critical Habitat Designation**

#### *Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued

existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we ensure that the actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species and avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify or destroy such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify or destroy critical habitat, we base our analysis on the effects of the action on the entire critical habitat area and not just on the portion where the activity will occur. Adverse effects on constituent elements or individual segments of critical habitat units generally do not result in an adverse modification determination unless that

loss, when added to the environmental baseline, is likely to appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the California red-legged frog is appreciably reduced.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery (50 CFR 402.02). Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species (50 CFR 402.02).

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned when the habitat is occupied by the species. The purpose of designating critical habitat is to contribute to a species' conservation, which by definition equates to survival and recovery. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species. As a result of the direct link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery. In those cases, the ramifications of its designation are few or none. Designation of critical habitat for the California red-legged frog is not likely to result in a regulatory burden above that already in place due to the presence of the listed species in areas currently occupied. In those cases where proposed actions occur in unoccupied critical habitat, it is conceivable that an action that adversely modifies

unoccupied critical habitat would not also result in a jeopardy conclusion in a section 7 consultation; this would result in an additional level of regulatory protection on lands where Federally authorized activities occur.

Activities that, when carried out, funded, or authorized by a Federal agency, that may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Sale, exchange, or lease of lands owned by Bureau of Land Management (BLM), U.S. Bureau of Reclamation (USBR), Department of Defense (DOD), Department of Energy (DOE), National Park Service (NPS), or Forest Service (USFS);

(2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers or other water transfers, diversion, or impoundment, groundwater pumping, irrigation activity that causes barriers or deterrents to dispersal, inundates or drains habitat, or significantly converts habitat;

(4) Regulation of grazing, recreation, mining, or logging by the BLM, USFS, USBR, DOD, or NPS;

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency (FEMA), including erosion control, flood control, streambank repair to reduce the risk of loss of property;

(6) Funding and regulation of new road construction or road improvements by the Federal Highways Administration;

(7) Funding of construction or development activities by the Department of Housing and Urban Development or other agencies that destroy, fragment, or appreciably degrade suitable habitat;

(8) Clearing of vegetation and hydrological modifications by the Department of Energy or other agencies; and

(9) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the clean up of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by the EPA.

Activities on private or State lands requiring a permit or funding from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Army

Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Any of the above activities that appreciably diminish the value of critical habitat to the degree that they affect the survival and recovery of the California red-legged frog may be considered an adverse modification of critical habitat. We note that such activities may also jeopardize the continued existence of the species.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor at our Sacramento, Ventura, or Carlsbad Fish and Wildlife Offices (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231-2063; facsimile 503/231-6243).

#### **Relationship to Habitat Conservation Plans**

A number of small habitat conservation planning efforts have been completed within the range of the California red-legged frog. Habitat conservation plans (HCPs) currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the California red-legged frog, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the California red-legged frog. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a suitable breeding and nonbreeding habitat within a matrix of dispersal habitat. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of

the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of proposed HCPs and proposed projects under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify lands essential for the long-term conservation of California red-legged frogs and appropriate conservation and management actions. Several HCP efforts are currently under way that address listed and nonlisted species in areas within the range of the California red-legged frogs and in areas we propose as critical habitat. These HCPs, which will incorporate appropriate adaptive management, should provide for the conservation of the species. Furthermore, we will complete intra-service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the California red-legged frog should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

#### **Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and, if necessary, reopen the comment period at that time to accept comments on the economic analysis or further comments on the proposed rule.

### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible.

Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat for California red-legged frogs as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the distribution of California red-legged frogs, the amount and distribution of the species' habitat, and what habitat is essential to the conservation of the species, and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, including, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for California red-legged frogs, such as those derived from nonconsumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values", and reductions in administrative costs).

In this proposed rule, we do not propose to designate critical habitat on non-Federal lands within the boundaries of any existing HCP with an executed Implementation Agreement and permit for California red-legged frogs approved under section 10(a)(1)(B) of the Act on or before the date of the final rule designating critical habitat. We believe that, since an existing HCP provides long-term commitments to conserve the species and areas essential to the conservation of California red-legged frogs, such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and

allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat;

(2) Designate reserves, preserves, and other conservation lands identified by approved HCPs on the premise that they encompass areas that are essential to conservation of the species within the HCP area and will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for California red-legged frogs is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for California red-legged frogs in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

Several conservation planning efforts are now under way within the range of the California red-legged frog, and other listed and nonlisted species, in areas we are proposing as critical habitat. Where these HCPs are currently under development, we are proposing to designate as critical habitat the areas that we believe are essential to the conservation of the species and that need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following, or other approaches, for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for California red-legged frogs:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential to the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of California red-legged frogs, we would revise the critical habitat designation to exclude areas outside the reserves,

preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(3) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

If you would like to submit comments by e-mail (see **ADDRESSES** section), please submit as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AG32" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number 916/414-6600.

### Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment,

during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

### Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We will conduct four public hearings on this proposal, for commenters who may wish to make their comments orally. The hearings will take place on:

(1) Tuesday, September 19, 2000, at the Holiday Inn Ventura, 450 East Harbor Blvd., Ventura, California. There will be two sessions: An afternoon session from 1 to 3 pm, and an evening session from 6 to 8 pm.

(2) Thursday, September 21, 2000, at the Embassy Suites, 333 Madonna Road, San Luis Obispo, California. There will be two sessions: an afternoon session from 1 to 3 pm, and an evening session from 6 to 8 pm.

(3) Tuesday, September 26, 2000, at the Best Western Monarch Hotel, 6680 Regional Street, Dublin, California. There will be two sessions: an afternoon session from 1 to 3 pm, and an evening session from 6 to 8 pm.

(4) Thursday, September 28, 2000, at the Holiday Inn Sacramento Northeast, 5321 Date Avenue, Sacramento, California. There will be two sessions: an afternoon session from 1 to 3 pm, and an evening session from 6 to 8 pm.

Anyone wishing to make an oral statement for the record is encouraged

to provide a written copy of their statement and present it to us at the hearing. In the event of large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us.

### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following:

(1) Are the requirements in the document clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with the clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

### Required Determinations

#### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector,

productivity, jobs, the environment, or other units of government.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (Table 2). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action on occupied habitat that could potentially cause destruction or adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding in areas currently occupied by California red-legged frogs. However, on the unoccupied lands proposed as critical habitat, 90 percent of which are Federal lands, a Federal action could potentially cause an adverse modification of proposed critical habitat, but not be considered as "jeopardy" under the Act. Therefore, there is an addition incremental impact in these circumstances. Non-Federal persons that do not have any Federal involvement with their actions are not restricted by the designation of critical habitat; however, they continue to be bound by the provisions of the Act concerning take of the species.

TABLE 2.—IMPACTS OF CALIFORNIA RED-LEGGED FROG LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only <sup>1</sup>	Additional activities potentially affected by critical habitat critical habitat designation <sup>1</sup>
Federal Activities Potentially Affected <sup>2</sup> .....	Grazing permits, commercial or or silvicultural logging prescriptions, 404 permits, Flood Control projects, Federal Emergency Management Act (FEMA) activities, Federal Highway Administration actions, Federal Housing Act actions.	None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected, but consultation, previously not required due to listing, will be required on these activities.
Private or other non-Federal Activities Potentially Affected <sup>3</sup> .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy California red-legged frog habitat by mechanical, chemical, or other means (e.g., grading, overgrazing, timber harvesting within riparian areas, construction, road building, herbicide application, recreational use) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	None in occupied habitat. In unoccupied habitat, no additional types of.

<sup>1</sup> These columns represent activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

<sup>2</sup> Activities initiated by a Federal agency.

<sup>3</sup> Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the California red-legged frog since the listing in 1996. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. There may be additional restrictions for unoccupied lands. However, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of critical habitat currently occupied, and only minimal effects in areas currently unoccupied since the areas being proposed as unoccupied critical habitat is primarily on Federal lands.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

#### **Regulatory Flexibility Act (5 U.S.C. 601 et seq.)**

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for occupied areas of critical habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we propose designation of property owned by State and local governments and private property and identify the types of Federal actions or authorized activities that are of potential concern (Table 2). If these activities are sponsored by Federal agencies, they may be carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As

discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of critical habitat except on unoccupied lands proposed as critical habitat, 90 percent of which are on Federal lands. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

#### **Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))**

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in occupied areas of critical habitat.

#### **Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)**

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits or other authorized activities must ensure that their actions will not adversely modify or destroy the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation on occupied lands.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

#### **Takings**

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the California red-legged frog. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, the fact that critical habitat on occupied lands provides no incremental restrictions, and because 90 percent of the unoccupied lands occur on Federal lands, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the California red-legged frog. This proposed rule will not "take" private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists.

#### **Federalism**

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the California red-legged frog with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the California red-legged frog imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat

necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

#### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the California red-legged frog.

#### Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

#### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of

1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Government-to-Government Relationship With Tribes

In accordance with the Presidential Memorandum of April 29, 1994, we believe that, to the maximum extent possible, tribes should be the governmental entities to manage their lands and tribal trust resources. To this end, we support tribal measures that preclude the need for Federal conservation regulations. We provide technical assistance to Indian tribes who wish assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary.

The Presidential Memorandum of April 29, 1994, also requires us to consult with the tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including the tribes. Recognizing a government-to-government relationship with tribes and our Federal trust responsibility, we will consult with the Indian tribes that might be affected by the designation of critical habitat.

Due to the time constraints imposed by the court order, we will make every effort to consult with Santa Ynez Band of the Chumash Mission Indians during the comment period for this proposal to gain information on—(1) possible effects if critical habitat were designated on

Indian reservation lands; and (2) possible effects on tribal resources resulting from designation of critical habitat on non-tribal lands. We will meet with each potentially affected tribe to ensure that consultation on critical habitat issues occurs in a timely manner.

#### References Cited

A complete list of all references cited in this proposed rule is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors: The primary authors of this notice are Curt McCasland and Brian Twedt, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Proposed Regulation Promulgation

For the reasons given in the preamble above, we propose to amend 50 CFR part 17 as set forth below:

#### PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for “Frog, California red-legged,” under “amphibians,” to read as follows:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, California Red-legged.	<i>Rana aurora draytonii</i> .	U.S.A.(CA), Mexico.	Entire (excluding) Del Norte, Humboldt, Trinity, and Mendocino Cos., CA; Glenn, Lake, And Sonoma Cos., CA, west of the Central Valley Hydrologic Basin; Sonoma and Marin Cos., CA, west and north of San Francisco Bay drainages and Walker Creek drainage; and NV).	T	583	17.95(d)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(d) by adding critical habitat for the California red-legged frog (*Rana aurora draytonii*) in the same alphabetical order as this species occurs in 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

\* \* \* \* \*

(d) *Amphibians.*

\* \* \* \* \*

California Red-Legged Frog (*Rana aurora draytonii*)

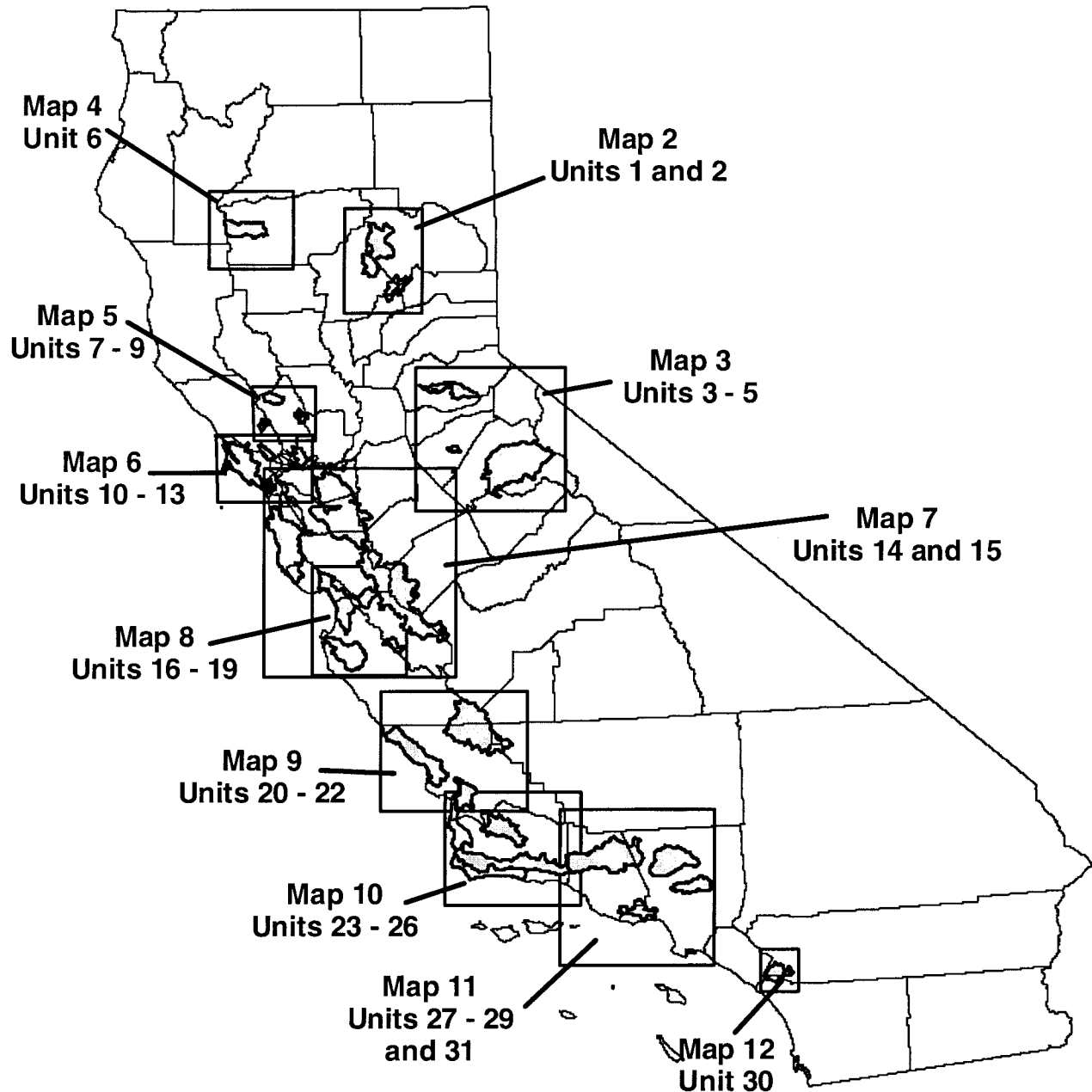
Primary constituent elements of the California red-legged frog, found in the designated watersheds in the following 31 units, include aquatic, dispersal, and upland habitat components. Aquatic

components consists of all still or slow-flowing freshwater aquatic features possessing minimum water depths of 20 cm (8 in.), with the exception of deep lacustrine water habitat (lakes and reservoirs) inhabited by nonnative predators, that are essential for providing space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, nonbreeding subadults, and breeding and nonbreeding adult frogs, *and* are found in areas with two or more suitable breeding locations and a permanent water source with no more than 2 km (1.25 mi) separating these locations. Dispersal habitat consists of upland and

aquatic areas, free of barriers, essential for providing connectivity between aquatic areas identified above. Upland habitat component are areas within 150 m (500 ft) from the edge of the aquatic primary constituent element. In situations where a watershed boundary is less than 150 m (500 ft) from suitable habitat, the top of the watershed shall be the boundary for this constituent element. Existing features and structures, such as buildings, roads, railroads, urban development, and other features not containing primary constituent elements, are not considered critical habitat.

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## Map 1 - Index Proposed California Red Legged Frog Critical Habitat Units



*Map Unit 1:* The following watersheds in Plumas and/or Butte Counties, California: Grizzly Creek (1841), Mosquito Creek (1845), Caribou (1886), Rock Creek Reservoir (1926), Milk Ranch Creek (2008), Right Hand Salt Rock Creek (2025), Rainbow Point (2052), Haskins Valley (2103), Grizzly Forebay (2083), Duffey Dome (2092), Coyote Gap (2166), Bush Creek (2181),

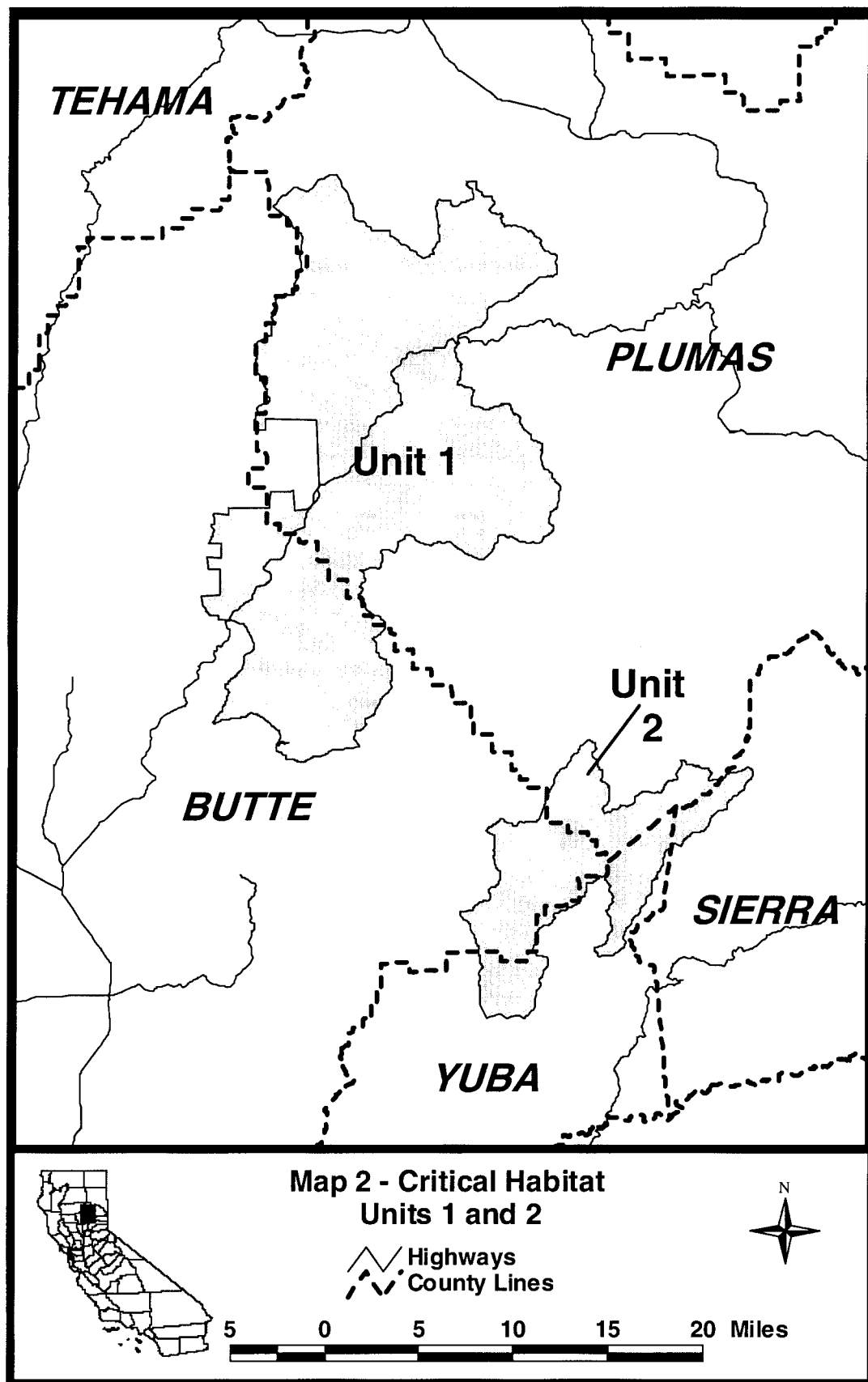
Kelly Reservoir (2204), Mosquito Creek (2236), Chino Creek (2201), Dogwood Creek (2112), Lockerman Creek (2077), Swamp Creek (2067), Lower Bucks Creek (2046), North Valley Creek (2011), Flying Pan (1965), Chambers Creek (1986), Chips Creek (1929), Squirrel Creek (1912), and Soda Creek (1881).

**Note:** Map follows:

*Map Unit 2:* The following watersheds in Plumas, Butte, Sierra, and/or Yuba counties, California: Rock Creek (2285), Lewis Flat (2316), Gold Run (2304), Brushy Creek (2345), Indian Creek (2446), and Oroleve Creek (2410).

**Note:** Map follows:

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*Map Unit 3:* The following watersheds in El Dorado County, California: North Fork Weber Creek (3127), Jenkinson Lake (3133), Hazel Creek (3135), North Sly Park Creek (3145), Headwaters Camp Creek (3189), Leek Spring Valley (3225), Capps Crossing (3222), North Steely Creek (3246), North Canyon (3224), Van Horn Creek (3202), Snow Creek (3167), Clear Creek (3157), South Fork Weber Creek (3160), Ringold Creek (3164), and China Creek (3159).

**Note:** Map follows:

*Map Unit 4:* The following watersheds in Calaveras County, California: Lower O'Neil Creek (3586), Dirty Gulch (3594), Old Gulch (3634), Middle San Antonio Creek (3583), Indian Creek (3639), and Upper San Domingo Creek (3620).

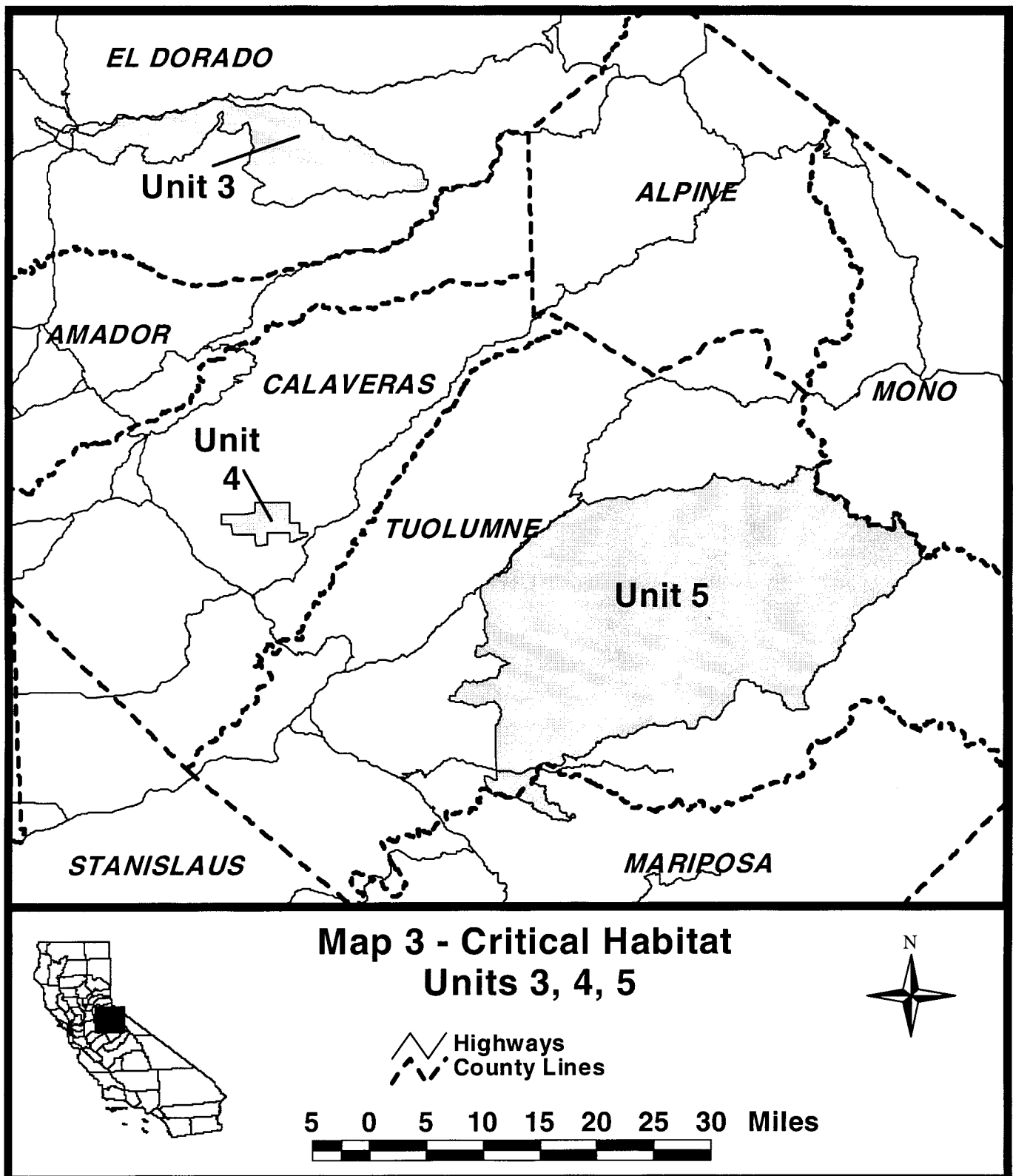
**Note:** Map follows:

*Map Unit 5:* The following watersheds in Tuolumne and/or Mariposa counties, California: North Fork Cherry Creek (3593), East Fork Cherry Creek (3613), Upper Jack Main Canyon (3626), Tilden Creek (3650), Stubblefield Canyon (3660), Thompson Canyon (3648), Kerrick Canyon (3664), Breeze Creek (3748), Tueulala (3796), Poopenaut Valley (3822), Base Line Camp (3840), Preston Falls (3858), Corral Creek (3827), Gold Queen Mine (3930), Jordan Creek (3989), Hells Hollow Creek (3940), Grapevine Creek (3863), Hunter Creek (3815), Basin Creek (3758), Sugarpine Creek (3675), Brownes Meadow (3631), Bell Creek (3618), Lily Creek (3615), Piute Creek (3610), Spring Creek (3600), Buck Meadow Creek (3608), Cherry Lake (3763), Lake Eleanor (3791), Rosasco Lake (3659), Wilson

Ridge (3806), White Fir Creek (3737), Big Lake (3661), Kibble Creek (3709), Plum Flat (3850), Granite Creek (3834), Miguel Creek (3783), Kendrick Creek (3658), Bartlett Creek (3706), Eleanor Creek (3723), Upper Frog Creek (3690), Rock Creek (3685), Clavey River from mile 27 to 30 (3668), Trout Creek (3651), Cottonwood Creek (3767), Twomile Creek (3719), Hull Creek (3671), Crane Creek (3753), Skunk Creek (3802), Reynolds Creek (3707), Bear Spring Creek (3821), Bull Meadow Creek (3868), Bourland Creek (3677), Upper Frog Creek (3766), Brannigan Lake (3732), Lower Jack Main Canyon (3691), Tilden Canyon Creek (3705), East Side Tiltill Mtn. (3750), Deep Canyon (3756), and Tiltill Creek (3760).

**Note:** Map follows:

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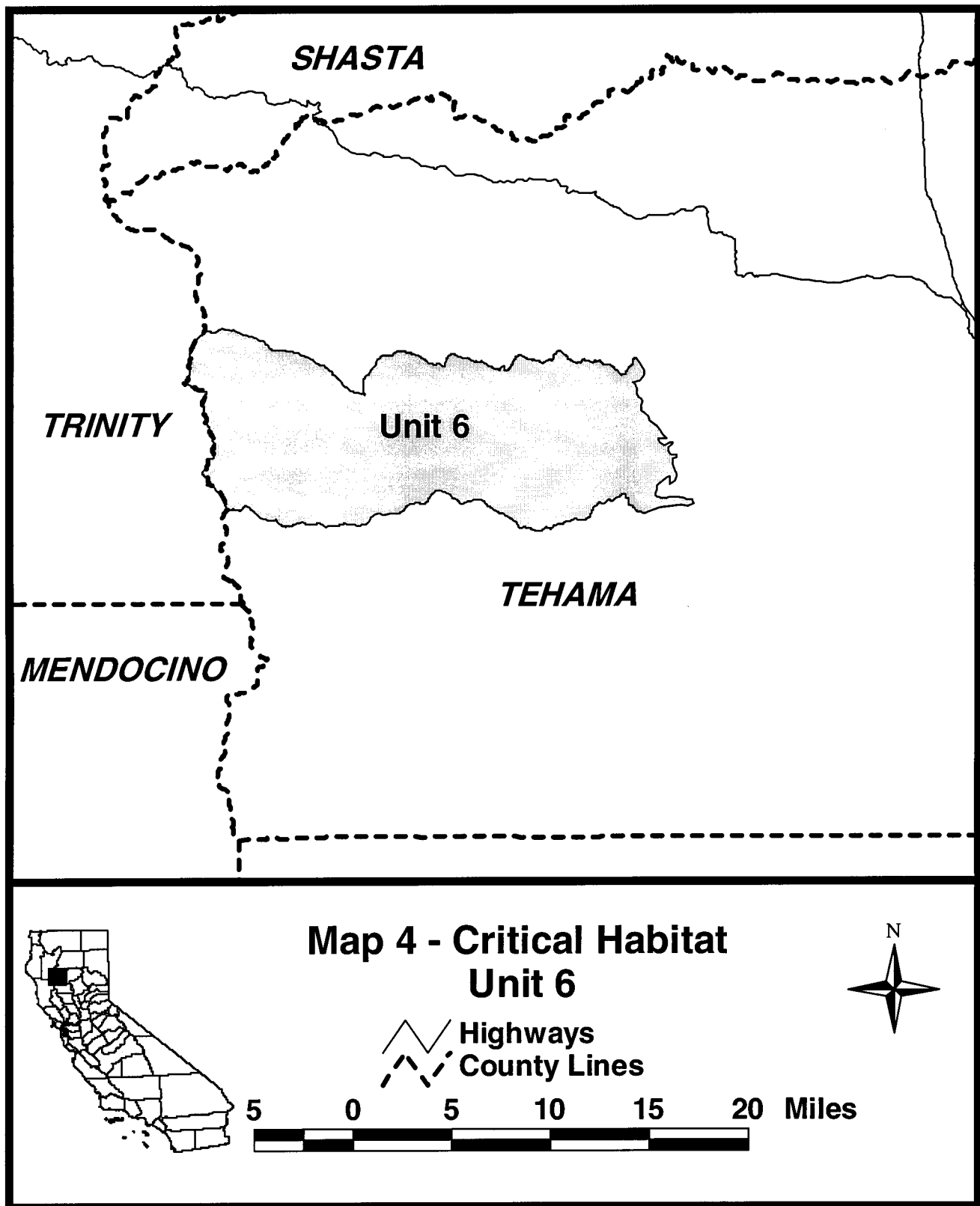
*Map Unit 6:* The following watersheds in Tehama County, California: Bear Gulch (1815), Long Gulch (1821), Maple Creek (1822),, Panther Gulch (1828), Buck Creek (1831), Cracker Canyon

(1823), Jackass Canyon (1834), Little Grizzly Creek (1874), Sunflower Gulch (1902), Red Bank (1910), Alder Creek (1914), Sulphur Creek (1909), Slides Creek (1878), Harvey Creek (1894), Buck

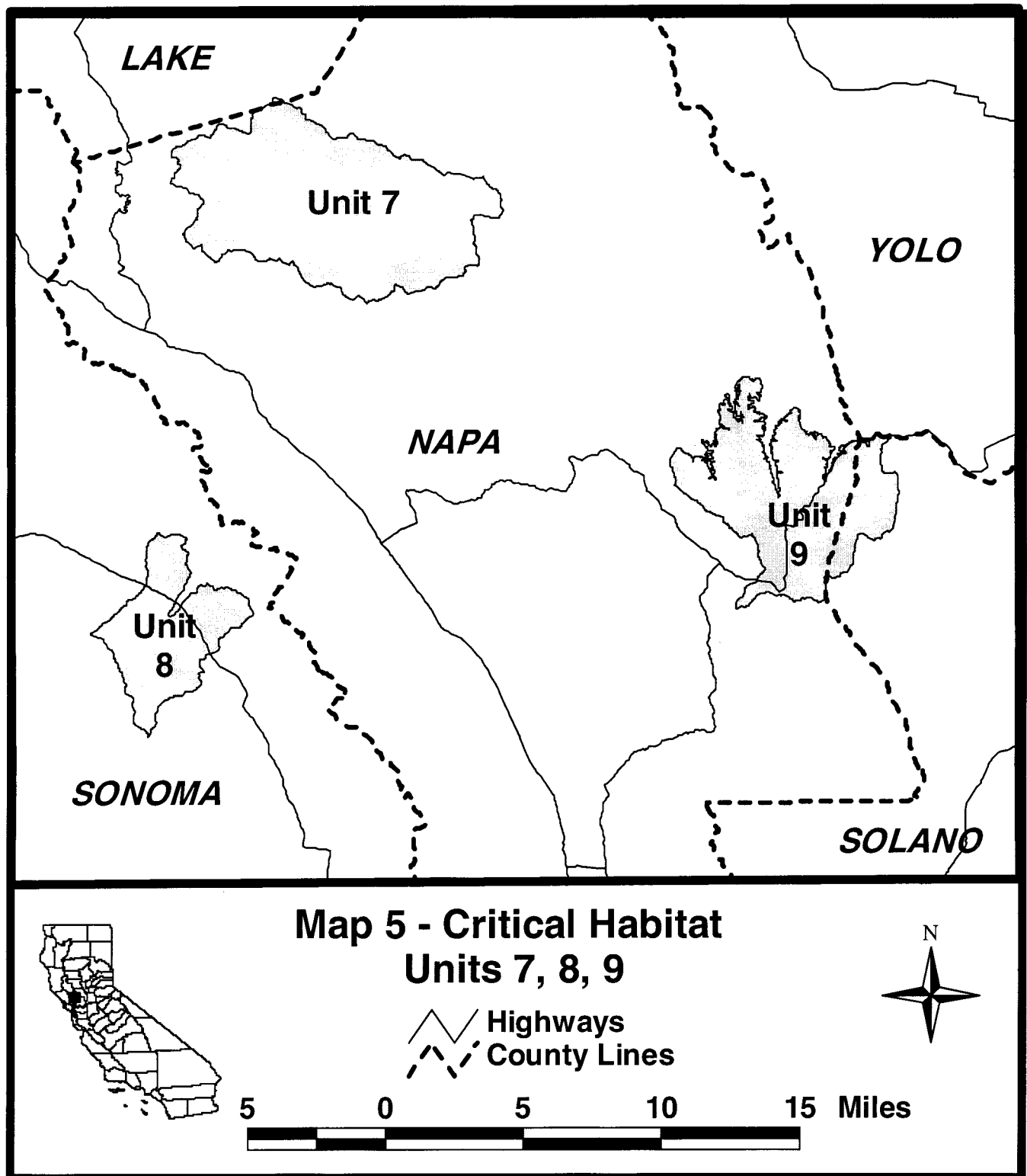
Creek (1893), Elkhorn Creek (1870), and Devils Hole Gulch (1867).

**Note:** Map follows:

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<p><i>Map Unit 7:</i> The following watersheds in Napa County, California: James Creek (3220), Pope Canyon (3235), Burton Creek (3278), and Swartz Creek (3250).</p> <p><b>Note:</b> Map follows:</p>	<p><i>Map Unit 8:</i> The following watershed in Sonoma County, California: Upper Sonoma Creek (3440).</p> <p><b>Note:</b> Map follows:</p> <p><i>Map Unit 9:</i> The following watersheds in Napa and/or Solano counties,</p>	<p>California: Steel Canyon (3390), Wragg Canyon (3361), Markley Canyon (3378), and Wild Horse Canyon (3395).</p> <p><b>Note:</b> Map follows: insert map 5.</p> <p><b>BILLING CODE 4310-55-P</b></p>
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*Map Unit 10:* All or portions of the following watersheds in Marin and/or Sonoma counties, California: Lower Petaluma River [East of Hwy 101, south of Hwy 116 to intersection with Frates Road; south and east of Frates Road] (3553), and Stage Gulch (3638).

**Note:** Map follows:

*Map Unit 11:* The following watersheds in Napa and/or Solano counties, California: Fagan Creek [south of Hwy 12] (3587), Jameson Canyon [south of Hwy 12] (3609), Pine Lake (3687), and Sky Valley (3678).

**Note:** Map follows:

*Map Unit 12:* The following watersheds in Sonoma and/or Marin counties, California: Keys Creek (3599), Chileno Creek (3622), Laguna Lake (3605), Salmon Creek (3672), Sausal (3684), Halleck Creek (3734), Nicasio Creek (3762), San Geronimo Creek (3798), Kent Lake (3813), Upper Lagunitas Creek (3851), Fern Creek (3897), Rodeo Lagoon (3959), Audobon Canyon (3870), Pine Gulch Creek (3838), Alamere Creek (3807), Glenbrook Creek (3745), Home Ranch Creek (3716), Point Reyes Peninsula (3729), Abbotts Lagoon

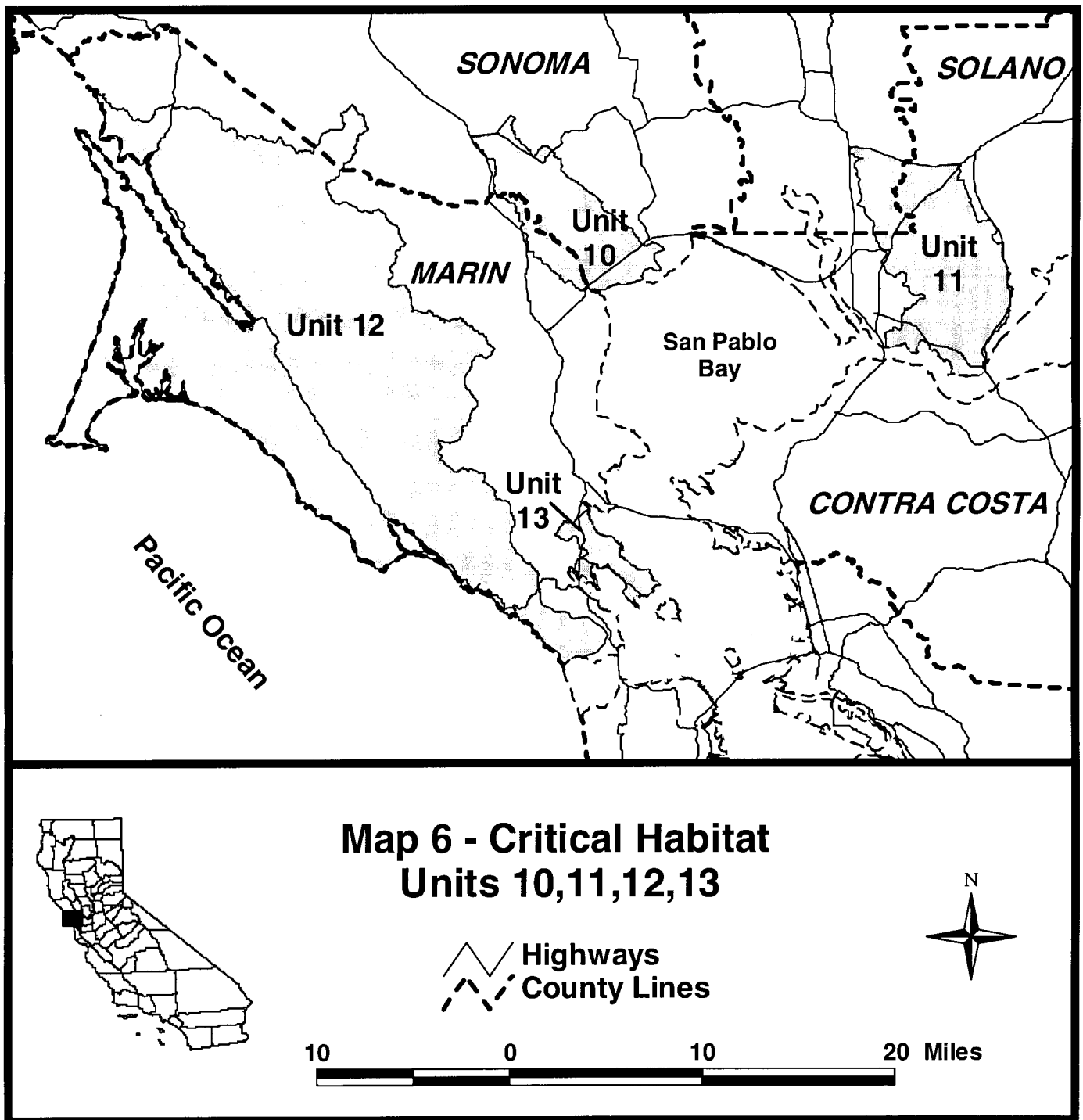
(3640), Inverness (3621), Tomasini Canyon (3715), Millerton Gulch (3694), Nicks Cove (3641), Nicasio Reservoir (3714), Lower Lagunitas Creek (3736), Olema Creek (3792), Lower Walker Creek (3623), Upper Walker Creek (3653), and Arroyo (3689).

**Note:** Map follows:

*Map Unit 13:* The following watershed in Marin County, California: Belvedere Lagoon (3884).

**Note:** Map follows:

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*Map Unit 14:* The following watersheds in San Mateo, Santa Clara, and/or Santa Cruz counties, California: Oyster Point (4112), Coyote Point (4167), Steinberger Slough (4234), Corte Madera Creek (4375), Peters Creek (4489), Slate Creek (4524), Waterman Creek (4544), East Waddell Creek (4603), Scott Creek (4669), Big Creek (4682), Waddell Creek (4613), Green Oaks Creek (4670), Cascade Creek (4635), Gazos Creek (4596), Arroyo de los Frijoles (4566), Little Butano Creek (4552), Bradley Creek (4512), Pompanio Creek (4488), Clear Creek (4436), Dry Creek (4377), Lobitos Creek (4374), Purisima Creek (4336), Pilarcitos Creek (4282), Denniston Creek (4250), San Pedro Creek (4197), San Andreas Lake (4190), Little Creek (4743), Butano Creek (4561), Honsinger Creek (4517), Teawater Creek (4506), Mindogo Creek (4476), El Corte de Madera Creek (4380), La Honda Creek (4408), Harrington Creek (4420), Pilarcitos Lake (4232), Mills Creek (4328), West Union Creek (4347), Bear Gulch Reservoir (4291), Lower Crystal Springs Reservoir (4212), Upper Crystal Springs Reservoir (4290), Polhemus Creek (4236), and Millbrae (4189).

**Note:** Map follows:

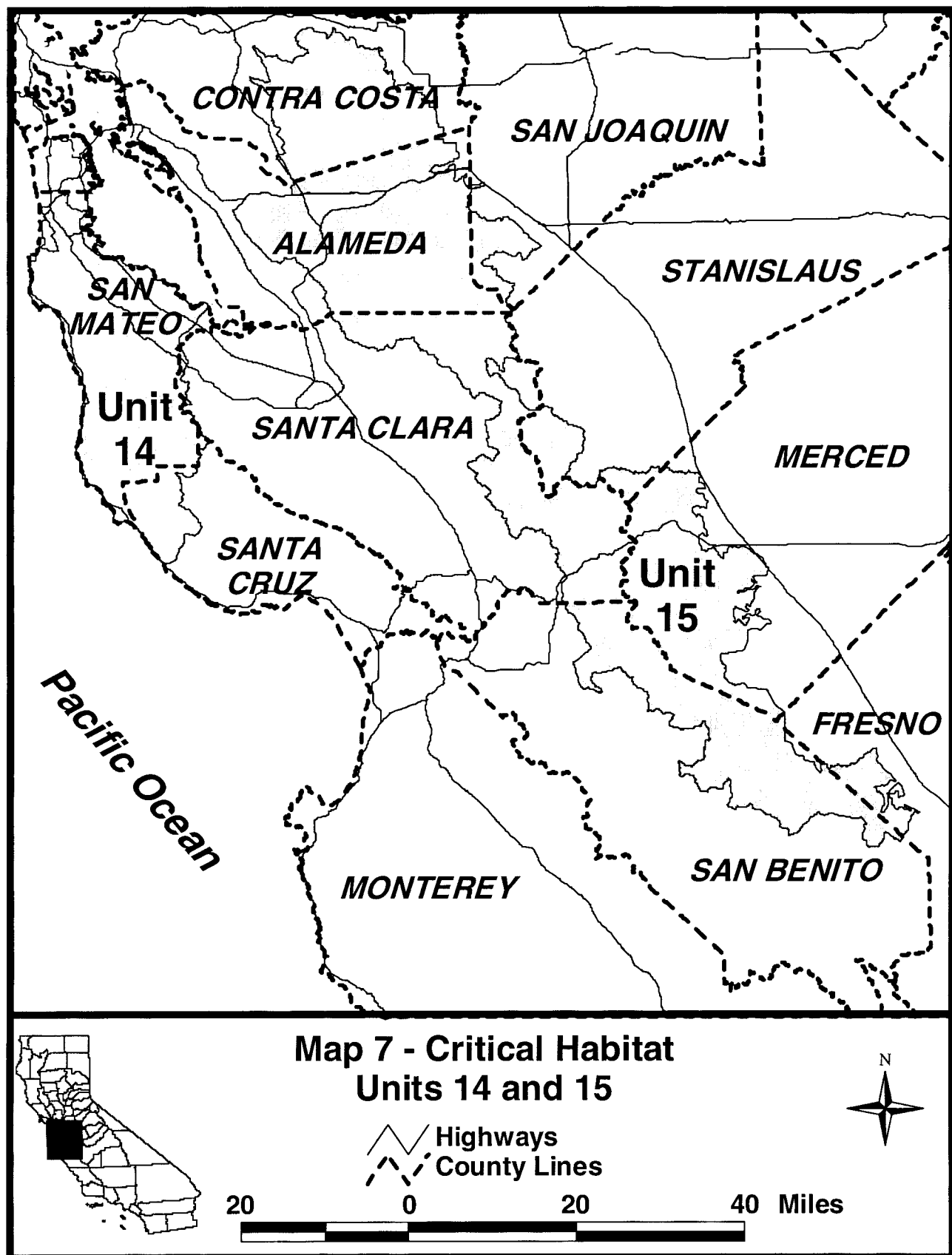
*Map Unit 15:* All or portions of the following watersheds in Contra Costa, Alameda, San Joaquin, Santa Clara, Stanislaus, San Benito, Merced, and/or Fresno counties, California: Kirker Creek (3818), Markley Canyon (3816), Sand Creek (3856), Deer Creek (3883), Lower Kellogg Creek (3929), Altamont Speedway (3926), Brushy Creek (3968), Bethany Reservoir (4007), Mountain House Creek (4070), Patterson Run (4083), Carnegie (4136), Lower Elk Ravine (4154), Deep Gulch (4153), Mitchell Ravine (4168), Upper Corral Hollow Creek (4209), Upper Arroyo Mocho (4280), Colorado Creek (4320), Sweetwater Creek (4361), Pino Creek

(4360), Jumpoff Creek (4426), Robinson Creek (4485), Lion Canyon (4516), Coon Creek (4626), Pine Springs Canyon (4627), Upper Quinto Creek (4608), Middle Quinto Creek (4607), Tule Lake (4655), Romero Overlook (4694), San Luis Reservoir (4704), San Luis Reservoir (4776), Arroyo Padre Flat (4840), Carusalito Creek (4884), Herrero Canyon (4905), Ruby Canyon (4952), Orogne Canyon (4983), Ojeda Canyon (5015), Mine Creek (5029) Merdey Creek (5053), Vasquez Creek (5106), E. of Glaucothane Ridge (5118), North of Indian Valley (5152), Capita Canyon (5128), Right Angle Canyon (5161), North Tumey Hills (5197), Upper Silver Creek (5218), South Tumey Hills (5180), Panoche Valley (5149), Clough Canyon (5200), Lower Bitterwater Canyon (5196), Panoche Creek (5136), Antelope Creek (5123), Las Aguilas Valley (5071), Upper Los Muertos Creek (5069), Canada Verde (5012), Lower Quien Sabe Creek (4977), Middle Quien Sabe Creek (4972), Santa Ana School (4954), Lone Tree Oak (4921), Sulfur Creek (4849), Elephant Head Creek (4790), Cedar Creek (4705), Middle Coyote Creek (4698), Rough Gulch (4647), Middle Fork Coyote Creek (4584), East Fork Coyote River (4560), Long Canyon (4479), Arroyo Bayo (4393), Valpe Creek (4287), Baby Peak (4300), Lower Arroyo Hondo (4321), Calaveras Creek (4346), Calaveras Reservoir (4295), Leyden Creek (4258), Sheridan Creek (4211), Stoneybrook Canyon (4152), Oakland [north of Hwy 84] (3984), San Lorenzo Creek [east of Mission Blvd. To intersection with B Street; east and south of B Street] (4077), Crow Creek [south of B Street to intersection with I-580; south of I-580] (4017), Palomares Creek [south of I-580] (4082), Gold Creek [south of I-580] (4104), Livermore [north of I-580 to intersection with I-680; west of I-680 to intersection with Sunol Blvd; south and east of Sunol Blvd to intersection with 1st Street;

south of 1st Street to intersection with Stanley Blvd; south of Stanley Blvd to intersection with Hwy 84; south of Hwy 84 to intersection with I-580] (4051), Sycamore Creek (3951), Little Pine Creek (3855), Donner Creek (3865), Glaucothane Ridge (5126), Los Aquilas Canyon (5127), Hartman Creek (4586), Red Creek (4505), Hidden Creek (4775), Willow Spring (4791), Spicer Creek (4796), O'Connell's Spring (4702), Cottonwood Creek (4686), La Baig Spring (4764), Williams Canyon (4638), Cleveland Ranch (5019), Rincon Creek (4918), Lookout Mountain (4922), North Side Mustang Ridge (4856), Twin Peaks (4870), Middle Los Banos Creek (4811), Lower Los Banos Creek (4847), Upper Kellogg Creek (3974), Curry Canyon (3928), Sycamore Creek (3916), Briones Valley (3896), Pacheco Creek (4759), Chimney Canyon (4656), Mississippi Creek (4577), Pacheco Lake (4725), Hawkins Lake (4857), Pacheco Pass (4740), South Fork Pacheco Creek (4793), Upper Quien Sabe Creek (4925), Slacks Valley (5080), Kelly Cabin Canyon (4639), Long Canyon (4479), Patterson Pass (4094), Brushy Peak (4045), Altamont Creek (4052), Arroyo Seco (4128), Tunnel Creek (4204), Lower Arroyo Mocho (4159), Coffee Mill Creek (4281), Lake Del Valle (4182), Lang Canyon (4229), Trout Creek (4272), Dry Creek (4151), Sycamore Creek (4314), Indian Creek (4219), San Antonio Reservoir (4186), Whitlock Creek (4268), La Costa Creek (4226), Cottonwood Creek (4056), Daugherty Hills (4067), Alamo West Branch (3980), Coyote Creek (4030), Sinbad Creek (4138), Vallecitos Creek (4162), Vern (4145), Cayetano Creek (4022), Long Canyon (3898), Upper Tassajara Creek (3966), and Lower Tassajara Creek (4013).

**Note:** Map follows:

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*Map Unit 16:* Portions of the following watersheds in Santa Clara and/or San Benito counties, California: Santa Clara Valley [south and east of and including the Pajaro River; from intersection of Hwy 156 and Union Road, north and west of Hwy 156; from intersection of Hwy 156 with Los Viboras Road, north of Los Viboras Road] (4661) and Flint Hills [south and east of and including the Pajaro River] (4909).

**Note:** Map follows:

*Map Unit 17:* All or portions of the following watersheds in Santa Cruz, Monterey, and/or San Benito counties, California: West Branch Soquel (4680), Soquel Creek (4722), Aptos Creek (4762), Valencia Creek (4799), Corralitos Lagoon (4828), Mouth of Pajaro River

(4852), Soda Lake (4914), Sargent Creek [south of and including the Pajaro River] (4912), Pinocate Creek (4951), Vierra Canyon (5001), Espinosa Lake [west of Hwy 101] (5060), Neponset [north and west of Hwy 68 to intersection with Hwy 101; north and west of Hwy 101] (5038), Elkhorn Slough (4968), Bates Creek (4770), Hinckley Creek (4757), Moro Cojo Slough (5032), Corncob Canyon (4958), Strawberry Canyon (4985), Vierra Canyon (5001), Paradise Canyon (5018), Moro Cojo Slough (5039), Vierra Canyon (4949), and Oak Hills (5031).

**Note:** Map follows:

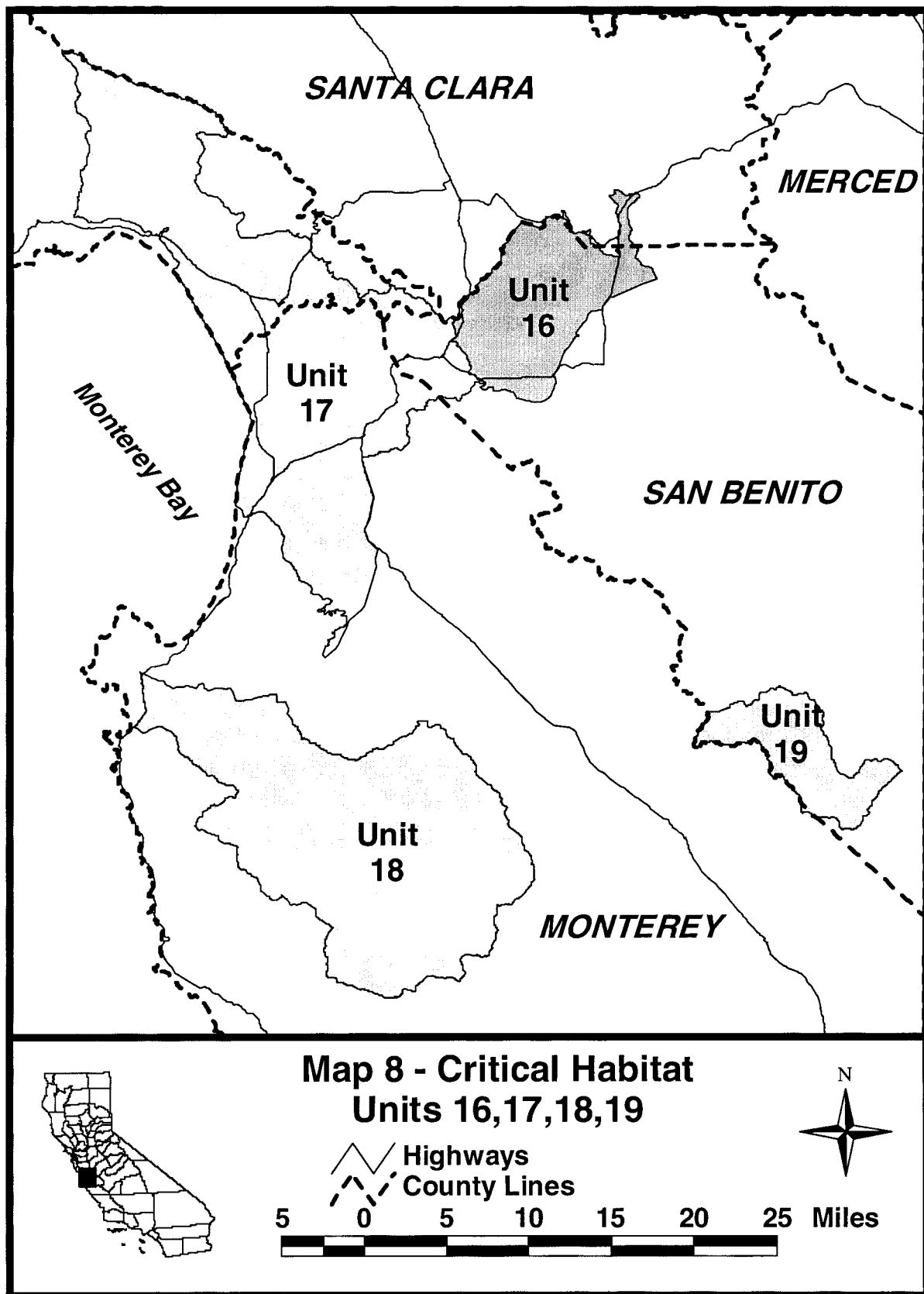
*Map Unit 18:* All or portions of the following watersheds in Monterey County, California: Carmel Bay [east of Hwy 1] (5232), Carmel Valley (5243),

Hitchcock Canyon (5297), Klondike Canyon (5307), Chupines Creek (5272), Rana Creek (5291), Upper Tularcitos Creek (5329), Bear Canyon (5363), Upper Finch Creek (5410), Miller Canyon (5424), Blue Creek (5459), Bruce Fork (5430), Danish Creek (5385), Pine Creek (5367), Black Rock Creek (5353), Las Garras Creek (5309), Robinson Canyon (5287), Lower Finch Creek (5368), Cachagua Creek (5375), and Lower Tularcitos Creek (5325).

**Note:** Map follows:

*Map Unit 19:* The following watersheds in San Benito and Monterey counties, California: Gloria Lake (5247) and George Hansen Canyon (5308).

**Note:** Map follows:



*Map Unit 20:* The following watersheds in Monterey, San Luis Obispo, and/or Kern counties, California: Upper Little Chalome Creek (5706), Lower Little Chalome Creek (5724), Oak Grove Canyon (5775), Cottonwood Creek (5782), Red Rock Canyon (5841), Blue Point (5877), Jack Canyon (5906), Woods Canyon (5940), Francisco Creek (5955), Raven Pass (5974), Packwood Creek (5982), Wilinon Canyon (6022), Holland Canyon (6001), Hughes Canyon (5988), West of Red Hills (6003), Gillis Canyon (5970), Tucker Canyon (5950), Wood Canyon (5929), Indian Creek (5927), Mile 9 to 11 Estrella River (5914), Estrella (5876), Lower Ranchito Canyon (5854), Lower San Jacinto Creek (5869), Upper San Jacinto Creek (5777), Headwaters Chalome Creek (5716), East of Palo Prieto Canyon (5921), Cholame Valley (5821), West Side Cholame Valley (5830), Palo Prieto Canyon (5886), South of Table Mtn. (5758), Lang Canyon (5757), Todds Spring Canyon

(5756), Durham Ranch (5788), West of Ranchito Canyon (5807), Upper Keyes Canyon (5806), Upper Hog Canyon (5797), Lower Hog Canyon (5847), Lower Keyes Canyon (5878), Upper Ranchito Canyon (5789), Bud Canyon (5888), Hopper Canyon (5919), Lower Shimmin Canyon (5911), Taylor Canyon (5865), Pine Canyon (5839), Upper Shimmin Canyon (5864), Willow Springs Canyon (5836), Sheep Camp Canyon (5899), Salt Canyon (6002), Freeman Canyon (5883), and Choice Valley (5964).

**Note:** Map follows:

*Map Unit 21:* The following watersheds in San Luis Obispo County, California: Burnett Creek (5891), Upper Arroyo de la Cruz (5938), Pico Creek (5959), Upper San Simeon Creek (5968), Steiner Creek (5998), Upper Santa Rosa Creek (6018), Villa (6061), Cottontail Creek (6080), Old Creek (6098), Toro (6111), Morro (6123), Morro Bay (6159), San Luisito Creek (6170), Choro

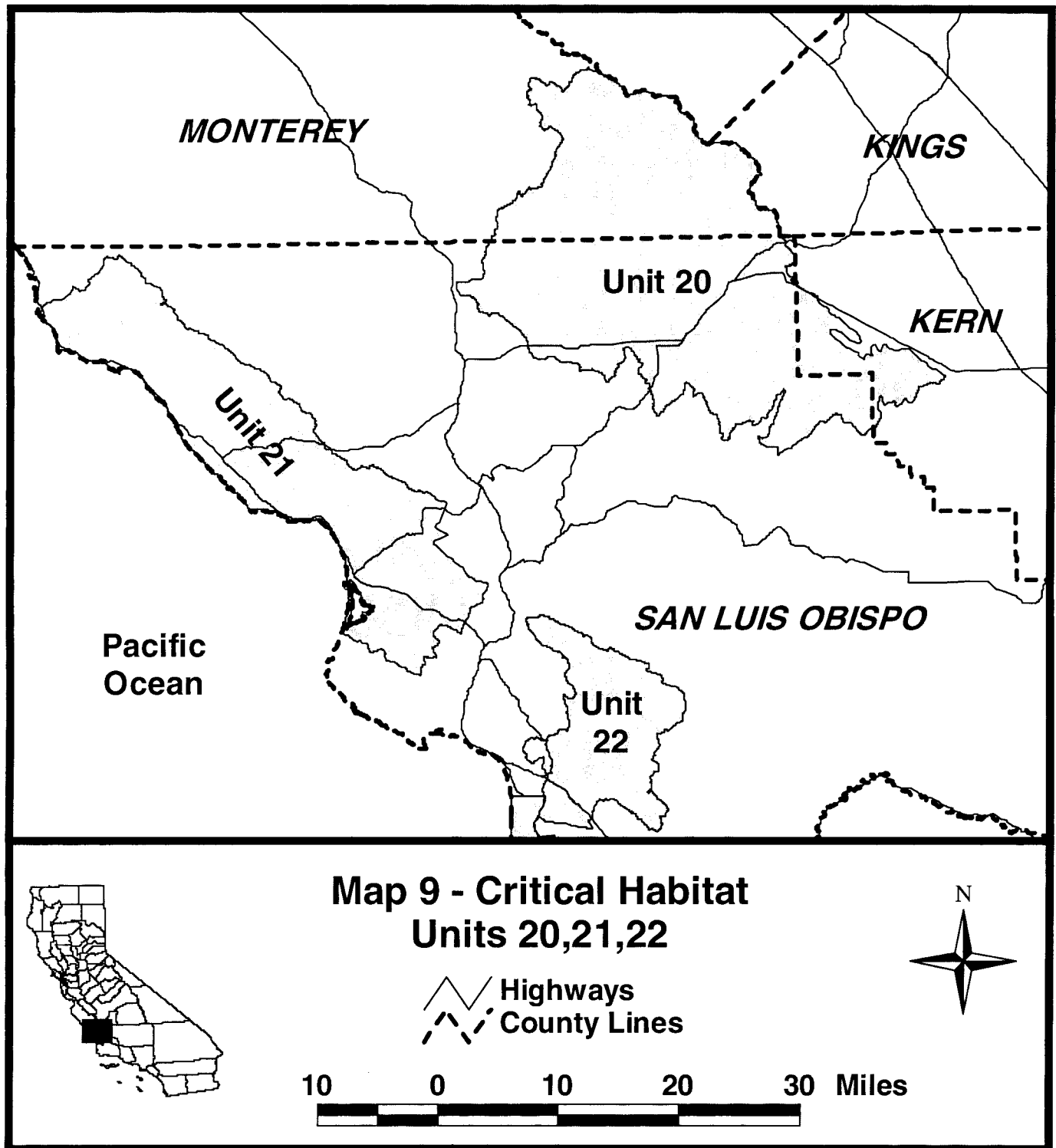
Reservoir (6185), Warden Lake (6214), Los Osos Creek (6221), Mouth of Los Osos Creek (6194), Whale Rock Reservoir (6124), Cayucos (6086), upper Green Valley Creek (6046), Lower Green Valley Creek (6049), Lower Santa Rosa Creek (6030), Lower San Simeon Creek (5993), Broken Bridge Creek (5956), Oak Knoll Creek (5952), Arroyo Del Corral (5947), Lower Arroyo de la Cruz (5926), and Middle Arroyo de la Cruz (5922).

**Note:** Map follows:

*Map Unit 22:* The following watersheds in San Luis Obispo County, California: Big Falls Canyon (6222), Wittenberg Creek (6253), Arroyo Grande Creek (6266), Tarspring Creek (6306), Los Berros Canyon (6327), Los Berros Creek (6330), Carpenter Canyon (6301), Clapboard Canyon (6278), Guaya Canyon (6277), and Vasquez Creek (6260).

**Note:** Map follows:

**BILLING CODE 4310-55-P**



*Map Unit 23:* All or portions of the following watersheds in San Luis Obispo and/or Santa Barbara counties, California: Cienega Valley [south of Grand Ave. towards intersection with Hwy 1; south of Hwy 1] (6317), Nipomo Mesa [west of Hwy 1] (6357), Santa Maria Valley [west and south of Hwy 1] (6379), Graciosa Canyon [west and south of Hwy 1] (6457), Harris Canyon [west of Hwy 1] (6481), Barka Slough (6492), Purisima Point (6484), Lions Head (6451), Casmalia Canyon (6456), Corralitos Canyon (6437), and Mussel Rock (6436).

**Note:** Map follows:

*Map Unit 24:* All or portions of the following watersheds in Santa Barbara County, California: Oak Canyon (6538), Thompson Park (6567), Cebada Canyon [south of Hwy 246] (6545), Santa Rita Valley [south of Hwy 246] (6551), Santa Rosa Creek [south of Hwy 246] (6548), Canada de los Palos Blancos [south of Hwy 246] (6557), Canada de la Laguna [south of Hwy 246] (6558), Ballard Canyon [south of Hwy 246] (6561), Santa Ynez Valley [south of Hwy 246 and south and west of Hwy 154] (6568),

San Lucas Creek (6593), S.E. of Happy Canyon (6573), Lower Cachuma Creek (6570), Lower Santa Cruz Creek (6563), Boat Canyon (6580), Redrock Canyon (6585), Oso Canyon (6587), Buckhorn Creek (6569), Lower Mono Creek (6592), Lower Aqua Caliente Canyon (6611), Alder Creek (6619), Juncal Canyon (6617), Blue Canyon (6613), Camuesa Creek (6596), Devils Canyon (6616), Arroyo Burro (6605), Los Lauveles Canyon (6600), Tequepis Creek (6608), Hilton Canyon (6601), Quiota Creek (6604), Alisal Creek (6607), Nojoqui Creek (6594), Yridisis Creek (6609), Palos Colorados Creek (6599), Upper Salsipuedes Creek (6606), Lake Cachuma (6588), Johnson Canyon (6579), Lower Salsipuedes Creek (6581), Canada de la Vina (6574), San Miguelito Creek (6577), Sloans Canyon (6576), and Lompoc Canyon (6562).

**Note:** Map follows:

*Map Unit 25:* The following watersheds in Santa Barbara County, California: Suey Canyon (6394), Colson Canyon (6409), Bear Canyon (6397), Lower South Fork La Brea Creek (6422), Middle South Fork La Brea Creek

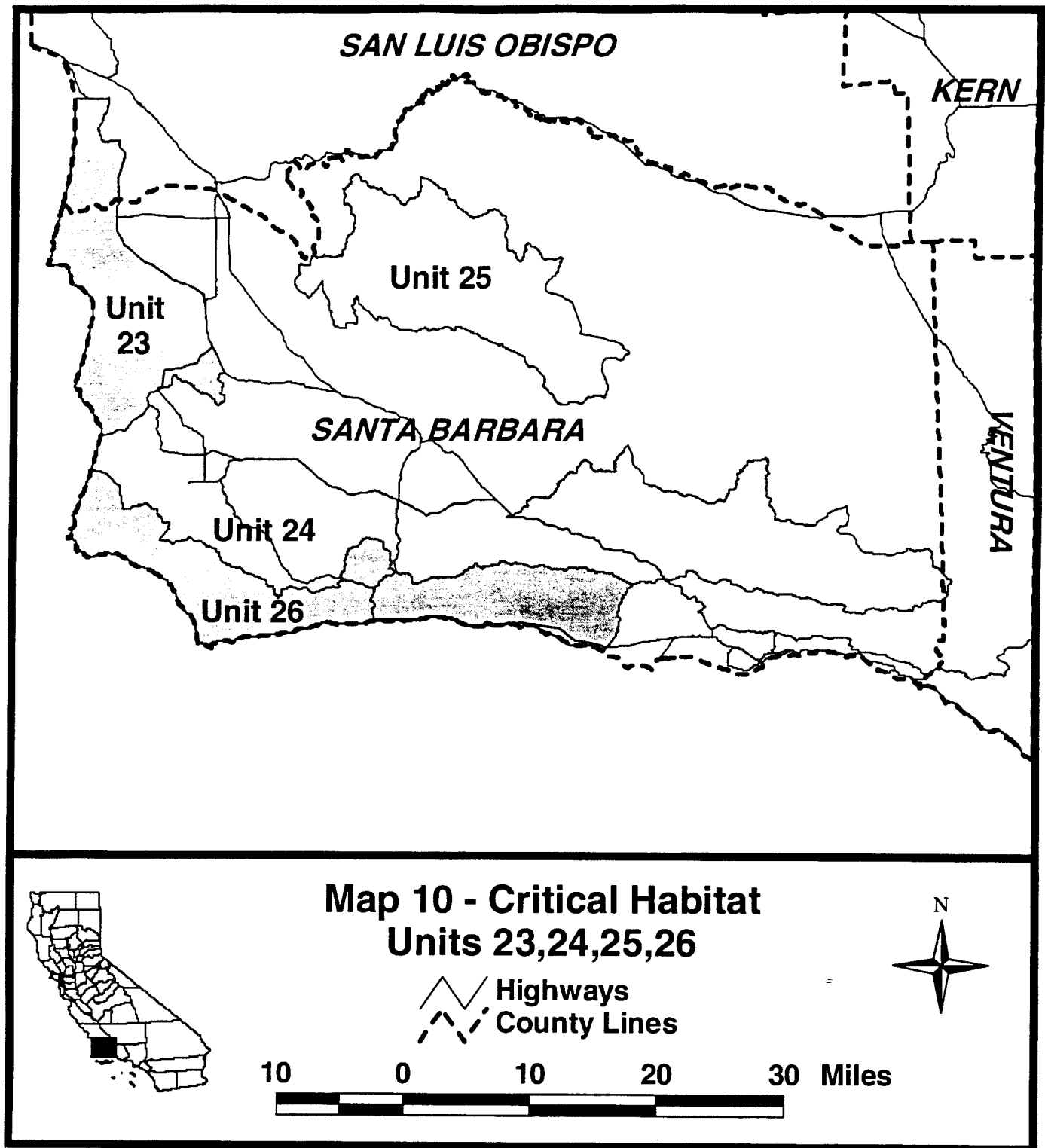
(6419), Tunnel Canyon (6452), Lower Horse Canyon (6440), Burro Canyon (6465), Lower Manzano Creek (6494), Middle Manzano Creek (6500), Fir Canyon (6514), Sulphur Creek (6487), Alkali Canyon (6446), Round Corral Canyon (6467), Kelly Canyon (6455), Rattlesnake Canyon (6428), Lower La Brea Creek (6433), Santa Maria Canyon (6439), and Tepusquet Creek (6432).

**Note:** Map follows:

*Map Unit 26:* The following watersheds in Santa Barbara County, California: Bear Creek (6575), La Honda Canyon (6590), Long Horn Canyon (6610), Gasper Creek (6614), Palo Alto Hill (6626), Arroyo El Bulito (6643), Canada de Alegria (6642), Canada de la Gavota (6618), Canada de las Cruces (6615), Arroyo Hondo (6637), Tajiguas Creek (6623), Canada del Corral (6625), Canada del Capitan (6627), Gato Canyon (6629), Dos Pueblos Canyon (6628), Ellwood Canyon (6633), Eagle Canyon (6641), Point Conception (6645), and Point Arguello (6595).

**Note:** Map follows: insert map 10.

**BILLING CODE 4310-55-P**



*Map Unit 27:* The following watersheds in Santa Barbara, Ventura, and/or Los Angeles counties, California: Upper Piru Creek (6502), Upper Sespe Creek (6565), North Fork Matilija Creek (6612), Lower Matilija Creek (6624), Middle Matilija Creek (6603), Upper North Fork Matilija Creek (6598), and Upper Matilija Creek (6586).

**Note:** Map follows:

*Map Unit 28:* All or portions of the following watersheds in Los Angeles County, California: Lancaster [south of Johnson Road to intersection with California Aqueduct; south and west of Aqueduct until intersection with Barrel

Springs Road; south of Barrel Springs Road to intersection with Hwy 14; and west of Hwy 14] (6372), Rock Creek [west of Hwy 14] (6547), Eastern [north and west of Hwy 14 to intersection with Soledad Canyon Road; north of Soledad Canyon Road to intersection with Valencia Blvd.; north of Valencia Blvd. to Hwy 126; North of Hwy 126 to intersection with I-5; east of I-5 to intersection with Ridge Route Road; east of Ridge Route Road to intersection with Lake Hughes Road; east of Lake Hughes Road to intersection with Elizabeth Lake Road; south along Elizabeth Lake Road to intersection with Johnson Road; south of Johnson Road to intersection

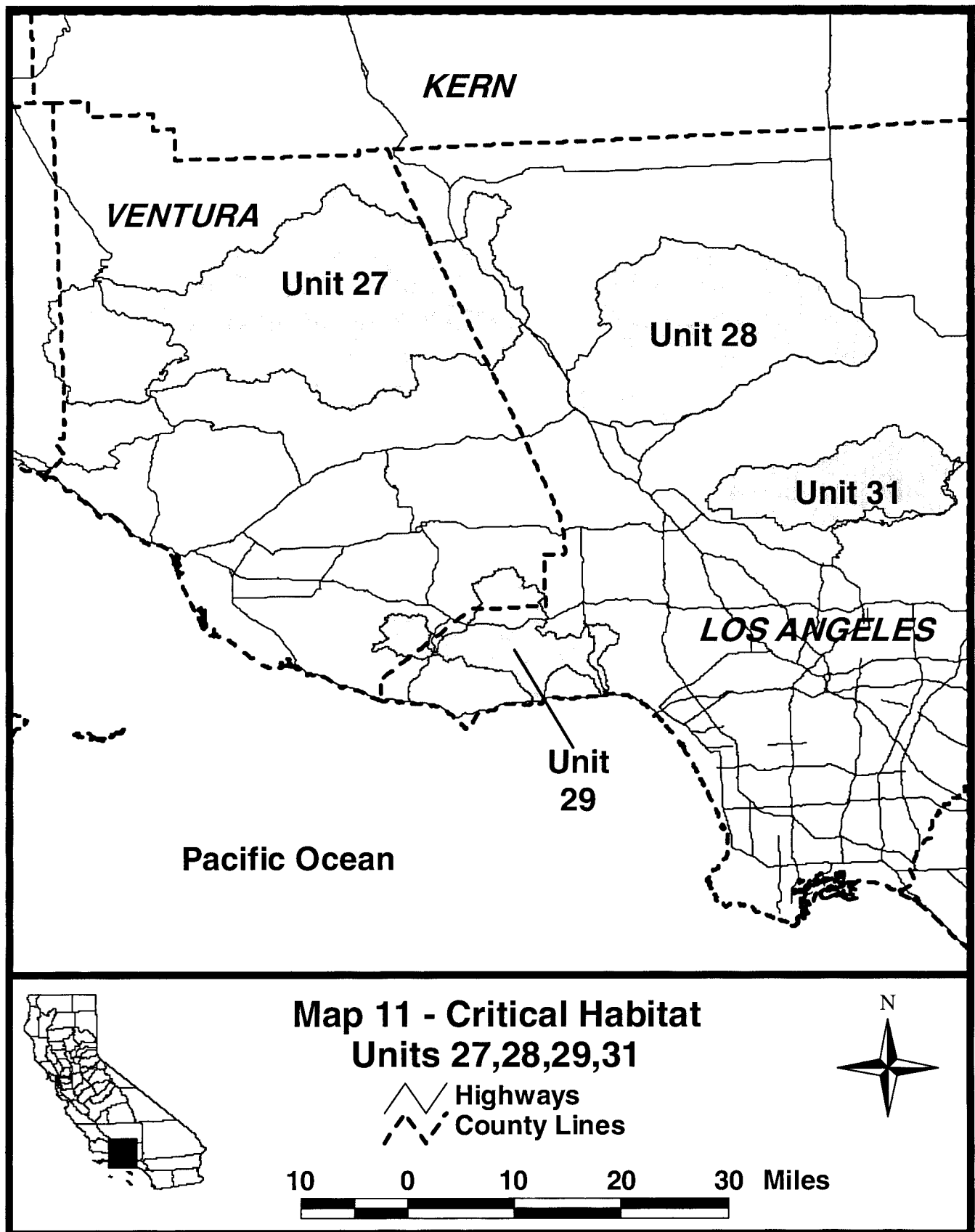
with the Lancaster watershed (6372)] (6520), Bouquet (6564), Mint Canyon (6582), Sierra Pelona (6583), and Acton [west and north of Hwy 14] (6589).

**Note:** Map follows:

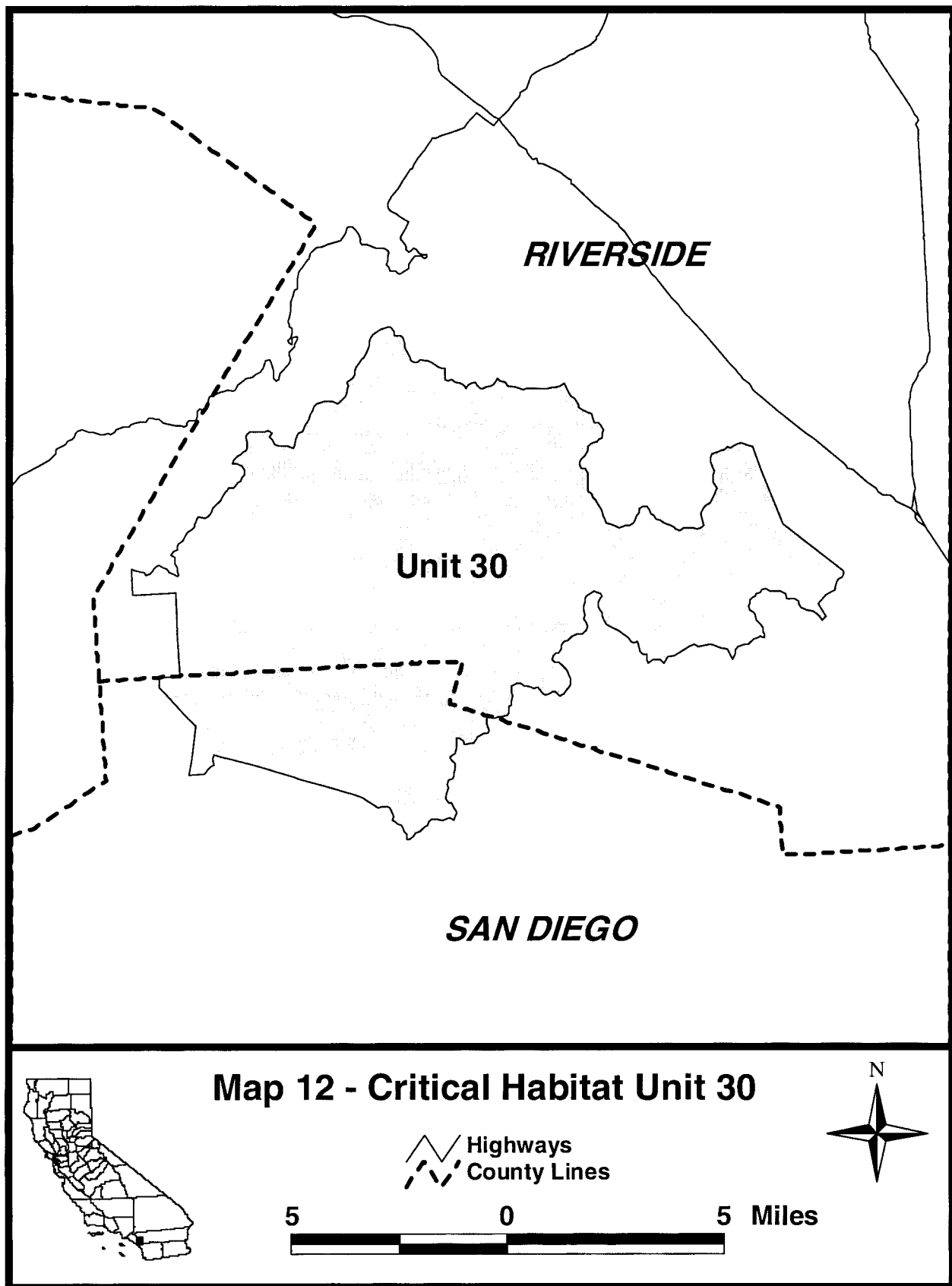
*Map Unit 29:* The following watersheds in Los Angeles and/or Ventura counties, California: West La Virgenes Canyon (6711), East La Virgenes Canyon (6746), Monte Nido (6747), Topanga Canyon (6738), Triunfo Canyon (6744), Sherwood (6728), and Lindero Canyon (6716).

**Note:** Map follows: insert map 11

**BILLING CODE 4310-55-P**



<i>Map Unit 30:</i> Portions of the following watersheds in Riverside and/or San Diego county, California: Deluz [within the boundaries of the Santa Rosa Plateau Ecological Reserve] (6870),	Murrieta [eastern boundary of the Santa Rosa (Morina) land grant, south to the southeastern boundary of the Santa Rosa Plateau Ecological Reserve] (6847), and San Mateo Canyon [east of and	including the western Cleveland National Forest boundary] (6852).  <b>Note:</b> Map follows: insert map 12.  <b>BILLING CODE 4310-55-P</b>
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*Map Unit 31:* Portions of the following watershed in Los Angeles County, California: Tujunga [east of and

including the Angeles National Forest boundary] (6658). See Map 11 above.

Dated: August 31, 2000.

**Stephen C. Saunders,**

*Assistant Secretary of Fish and Wildlife and Parks.*

[FR Doc. 00-22860 Filed 9-8-00; 8:45 am]

**BILLING CODE 4310-55-P**



# Federal Register

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**Monday,  
September 11, 2000**

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**Part IV**

**Department of  
Education**

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**Office of Special Education and  
Rehabilitative Services; Notice Inviting  
Applications for New Awards for Fiscal  
Year (FY) 2001; Notice**

**DEPARTMENT OF EDUCATION****Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001****AGENCY:** Department of Education.**ACTION:** Correction.

**SUMMARY:** On August 29, 2000, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program was published in the **Federal Register** (65 FR 52630). Under the Preparation of Personnel in Minority Institutions (84.325E) priority on page 52634, in column 3, paragraph (f), second sentence, we inadvertently listed “65 percent”. This notice will correct that sentence to read “Sufficient justification for proposing less than 55 percent of the

budget for student support would include activities such as program development, expansion of a program, or the addition of a new emphasis area.

**FOR FURTHER INFORMATION CONTACT:** For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, D.C. 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet:

Debra\_Sturdivant@ed.gov

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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**Program Authority:** 20 U.S.C. 1482.

Dated: September 5, 2000.

**Curtis L. Richards,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–23191 Filed 9–8–00; 8:45 am]

**BILLING CODE 4000–01–P**



# Federal Register

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**Monday,  
September 11, 2000**

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## **Part V**

### **Department of Defense General Services Administration**

### **National Aeronautics and Space Administration**

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**48 CFR Part 2, et al.**

**Federal Acquisition Regulations; Revisions  
to Balance of Payments Program and  
Definitions of “Applied Research” and  
“Development”; Proposed Rules**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 13, 25, and 52**

[FAR Case 1999–616]

RIN 9000–AI90

**Federal Acquisition Regulation;  
Revisions to Balance of Payments  
Program**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to remove regulations on the Balance of Payments Program.

**DATES:** Interested parties should submit comments in writing on or before November 13, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–616@gsa.gov. Please submit comments only and cite FAR case 1999–616 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAR case 1999–616.

**SUPPLEMENTARY INFORMATION:****A. Background**

This proposed rule amends FAR Part 25, Foreign Acquisition, to remove Subpart 25.3, Balance of Payments Program, and makes conforming changes to FAR Parts 13 and 52. Note that DoD complies with the Balance of Payments restrictions in Subpart 225.3 of the Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR 225.3). This proposed FAR rule does not imply any change in DoD policy with regard to Balance of Payments.

The Balance of Payments Program was established in the early 1960s to provide a preference for U.S. products and services for overseas use. The Balance of Payments Program restrictions are similar to the restrictions of the Buy American Act, which apply only within the United States. The Balance of Payments Program was an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. For civilian agencies, the Balance of Payments Program is applicable to only a small range of supplies or services. The amount of time and effort invested by civilian agencies in applying the Balance of Payments Program under these limited circumstances does not seem equal to any benefits that may be accrued under the program.

The Balance of Payments Program, as implemented in the FAR, originated with a Presidential Directive issued by President Eisenhower on November 16, 1960. This directive outlined steps the United States Government would take to alleviate balance of payment deficits resulting from efforts to restore economies devastated during World War II and bolster the military security of the United States and its allies. The directive was not one of general applicability, but instead identified actions to be taken by specific agencies, including direction to the Secretaries of Defense and Treasury to substantially reduce expenditures abroad of funds appropriated during fiscal year 1961 to the military services, the military assistance program, and the United States Coast Guard. This temporary restriction on overseas expenditure of appropriated funds by a few agencies was subsequently expanded as a matter of policy to apply to overseas acquisitions by all agencies subject to the FAR and has remained in effect for almost 40 years.

The Balance of Payments Program applies to purchases of supplies for use outside the United States and to construction materials for construction contracts performed outside the United States. Only a few civilian agencies make purchases for use outside the United States. Even fewer civilian agencies award construction contracts that are performed outside the United States.

The Balance of Payments Program applies to purchases valued at more than the simplified acquisition threshold (generally \$100,000) and has little impact for civilian agency acquisitions of supplies in excess of \$177,000 (the Trade Agreements Act threshold), because the civilian agencies

do not apply the Balance of Payments Program when the Trade Agreements Act applies.

Therefore, because there is no statutory requirement for this program, and because elimination of the Balance of Payments Program for civilian agencies will reduce administrative burdens on both the Government and the public, without significant impact on our international balance of payments, this rule proposes to eliminate the Balance of Payments Program from the FAR.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The proposed rule would apply primarily to civilian agency acquisitions of supplies valued at more than \$100,000, but not more than \$177,000, for use outside the United States. Few acquisitions meet all of these limitations. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–616), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104–13) applies. The proposed FAR changes will reduce information collection requirements approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*, by approximately 1,121 hours. The affected OMB control numbers are 9000–0023, 9000–0130, and 9000–0141.

1. *Annual Reporting Burden—OMB Control No. 9000–0023.* This rule proposes to eliminate this information collection requirement of 1,038 hours.

2. *Annual Reporting Burden—OMB Control No. 9000–0130.* This rule proposes to eliminate only the Balance of Payments portion of this information collection requirement. Public reporting burden for this collection of information is estimated to average .167 hours per response, including the time for

reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

*Respondents:* 1,130.

*Responses per respondent:* 5.

*Total annual responses:* 5,650.

*Preparation hours per response:* .167.

*Total response burden hours:* 944.

3. **Annual Reporting Burden—OMB Control No. 9000-0141.** This rule proposes to eliminate only the Balance of Payments portion of this information collection requirement. Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

*Respondents:* 485.

*Responses per respondent:* 2.

*Total annual responses:* 970.

*Preparation hours per response:* 2.5.

*Total response burden hours:* 2,425.

#### D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing these burdens, not later than November 13, 2000 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether the collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of the collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justifications from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control Numbers 9000-0023, 9000-0130, and 9000-0141 in all correspondence.

#### List of Subjects in 48 CFR Parts 13, 25, and 52

Government procurement.

Dated: September 5, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 13, 25, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 13, 25, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Amend section 13.302-5 by revising paragraph (d)(3)(i) to read as follows:

##### 13.302-5 Clauses.

\* \* \* \* \*

(d) \* \* \*

(3)(i) When an acquisition for supplies for use within the United States cannot be set aside for small business concerns and trade agreements apply (see subpart 25.4), substitute the clause at FAR 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, used with Alternate I or Alternate II, if appropriate, instead of the clause at FAR 52.225-1, Buy American Act—Supplies.

\* \* \* \* \*

#### PART 25—FOREIGN ACQUISITION

##### 25.000 [Amended]

3. Amend section 25.000 by removing “the Balance of Payments Program.”.

##### 25.001 [Amended]

4. Amend section 25.001 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively; and by removing “and the Balance of Payments Program” from the first sentence of newly redesignated paragraph (b).

##### 25.002 [Amended]

5. Amend the table in section 25.002 as follows:

a. In the first column by removing “25.3 Balance of Payments Program” and adding, in its place, “25.3 [Reserved]”; and

b. In the third and fifth columns by removing “X” and adding, in their place, “—”.

6. Amend section 25.003 by revising the definition “Eligible product” to read as follows:

##### 25.003 Definitions.

\* \* \* \* \*

*Eligible product* means a foreign end product that is not subject to discriminatory treatment under the Buy American Act due to applicability of a trade agreement to a particular acquisition.

\* \* \* \* \*

#### Subpart 25.3—[Reserved]

7. Remove and reserve Subpart 25.3.

##### 25.402 [Amended]

8. Amend section 25.402 in the first and fourth sentences by removing “or the Balance of Payments Program”; and in the fourth sentence by removing the word “such” and inserting “those” in its place.

##### 25.403 [Amended]

9. Amend section 25.403 in paragraph (a)(1) by removing “and the Balance of Payments Program”.

##### 25.405 [Amended]

10. Amend section 25.405 in the second sentence of paragraph (a) by removing “or the Balance of Payments Program”.

##### 25.406 [Amended]

11. Amend section 25.406 in the next-to-the-last sentence by removing “or the Balance of Payments Program”.

##### 25.501 [Amended]

12. Amend section 25.501 in paragraph (d) by removing “and Balance of Payments Program”.

##### 25.502 [Amended]

13. Amend section 25.502—

a. In the introductory text of paragraph (c) by removing “or the Balance of Payments Program”;

b. In paragraph (c)(3) by removing “and the Balance of Payments Program provide” and adding “provides” in its place;

c. In the introductory text of paragraph (c)(4) by removing “or 25.304”;

d. In paragraph (d)(2) by removing “or Balance of Payments Program”; and

e. In paragraph (d)(3) by removing “and Balance of Payments Program”.

##### 25.504 [Amended]

14. Amend section 25.504 by removing the next-to-the last sentence.

15. Amend section 25.504-1 by revising the section heading and paragraphs (b)(1) and (b)(2) to read as follows:

##### 25.504-1 Buy American Act.

\* \* \* \* \*

(b)(1) *Example 2.*

Offer A .....	\$11,000	Domestic end product, small business.
Offer B .....	10,700	Domestic end product, small business.
Offer C .....	10,200	U.S.-made end product (not domestic), small business.

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business but is not a domestic end product (see 25.502(c)(4)). After applying the 12 percent factor, the evaluated price of Offer C is \$11,424. Award on Offer B at \$10,700 (see 25.502(c)(4)(ii)).

16. Amend section 25.1101 by revising paragraphs (a), (b), and (c)(1) to read as follows:

**§ 25.1101 Acquisition of supplies.**

\* \* \* \* \*

(a)(1) Insert the clause at 52.225-1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding \$2,500 but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

(i) The solicitation is restricted to domestic end products in accordance with subpart 6.3;

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (e.g., nonavailability or public interest); or

(iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at 52.225-2, Buy American Act Certificate, in solicitations containing the clause at 52.225-1.

(b)(1)(i) Insert the clause at 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the value of the acquisition is more than \$25,000, but is less than \$177,000; and

(B) No exception in 25.401 applies. For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.

(ii) If the acquisition value exceeds \$25,000 but is less than \$50,000, use the clause with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$54,372, use the clause with its Alternate II.

(2)(i) Insert the provision at 52.225-4, Buy American Act—North American

Free Trade Agreement—Israeli Trade Act Certificate, in solicitations containing the clause at 52.225-3.

(ii) If the acquisition value exceeds \$25,000 but is less than \$50,000, use the provision with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$54,372, use the provision with its Alternate II.

(c)(1) Insert the clause at 52.225-5, Trade Agreements, in solicitations and contracts valued at \$177,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

\* \* \* \* \*

17. Amend section 25.1102 by revising the introductory text of paragraph (a), paragraph (b), the introductory text of paragraph (c), and paragraphs (d)(1) and (d)(2) to read as follows:

**§ 25.1102 Acquisition of construction.**

(a) Insert the clause at 52.225-9, Buy American Act—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$6,806,000.

\* \* \* \* \*

(b)(1) Insert the provision at 52.225-10, Notice of Buy American Act Requirement—Construction Materials, in solicitations containing the clause at 52.225-9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at 52.225-11, Buy American Act—Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at \$6,806,000 or more.

\* \* \* \* \*

(d)(1) Insert the provision at 52.225-12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at 52.225-11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act

before receipt of offers, use the provision with its Alternate I.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

18. Amend section 52.212-3 by—

a. Revising the date of the provision;

b. Removing “—Balance of Payments Program” from the introductory text of paragraph (f) (twice), and in paragraph (f)(1);

c. Removing “—Balance of Payments Program” from the introductory text of paragraph (g)(1) (twice), paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii);

d. Revising paragraphs (g)(2) and (g)(3); and

e. Removing “or the Balance of Payments Program” from the second sentence of paragraph (g)(4)(iii). The revised text reads as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

Offeror Representations and Certifications—Commercial Items (Date)

\* \* \* \* \*

(g) \* \* \*

(2) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (Date).* If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

Canadian End Products:

Line Item No.

(List as necessary)

(3) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (Date).* If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

Canadian or Israeli End Products:

Line Item No.

## Country of Origin

(List as necessary)

\* \* \* \* \*

19. Amend section 52.212-5 by revising the date of the clause and paragraphs (b)(17) and (b)(18)(i) to read as follows:

**52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Date)

(b) \* \* \*

(17) 52.225-1, Buy American Act—Supplies (41 U.S.C. 10a-10d).

(18)(i) 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

\* \* \* \* \*

**52.213-4 [Amended]**

20. Amend section 52.213-4 in the clause heading by removing “(July 2000)” and adding “(Date)” in its place; and in paragraph (b)(1)(viii) by removing “—Balance of Payments Program”, and by removing “(Feb 2000)” and adding “(Date)” in its place.

21. Amend section 52.225-1 by revising the section and clause headings; by removing the last sentence from paragraph (b); and by removing “—Balance of Payments Program” from paragraph (d). The revised text reads as follows:

**52.225-1 Buy American Act—Supplies.**

\* \* \* \* \*

Buy American Act—Supplies (Date)

\* \* \* \* \*

22. Amend section 52.225-2 by revising the section and provision headings; and in paragraph (a) by removing “—Balance of Payments Program”. The revised text reads as follows:

**52.225-2 Buy American Act Certificate.**

\* \* \* \* \*

Buy American Act Certificate (Date)

\* \* \* \* \*

23. Amend section 52.225-3—  
a. By revising the section and clause headings;

b. By revising paragraph (c);

c. By removing “—Balance of Payments Program” from the third sentence of paragraph (d); and

d. By removing from Alternates I and II “(Feb 2000)” and adding “(Date)” in their place; and removing “—Balance of Payment Program”. The revised text reads as follows:

**52.225-3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act.**

\* \* \* \* \*

Buy American Act—North American Free Trade Agreement—Israeli Trade Act (Date)

\* \* \* \* \*

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a-10d), the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), and the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note) by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products or Israeli end products.

\* \* \* \* \*

**52.225-4 [Amended]**

24. Amend section 52.225-4 by removing “—Balance of Payments Program” from the section and provision headings, and paragraphs (a), (b), and (c), and Alternates I and II; and by revising the dates of the provision heading and Alternates I and II to read “(Date)”.

25. Amend section 52.225-6 by revising the date of the provision and paragraph (c) to read as follows:

**52.225-6 Trade Agreements Certificate.**

\* \* \* \* \*

Trade Agreements Certificate (Date)

\* \* \* \* \*

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for those products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.  
(End of provision)

26. Amend section 52.225-9 by—  
a. Revising the section and clause headings;

b. Removing “and the Balance of Payments Program” from paragraph (b)(1);

c. Revising paragraph (b)(3)(i); and

d. Removing the words “or Balance of Payments Program” from paragraph (b)(3)(ii), the introductory text of

paragraph (c), the first sentence of paragraph (c)(2), and in paragraph (c)(3) (twice). The revised text reads as follows:

**52.225-9 Buy American Act—Construction Materials.**

\* \* \* \* \*

Buy American Act—Construction Materials (Date)

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

\* \* \* \* \*

(End of clause)

27. Amend section 52.225-10 by—  
a. Revising the section and provision headings;

b. Removing “Balance of Payments Program—” from paragraph (a);

c. In the first and third sentences of paragraph (b) of the provision by removing “or Balance of Payments Program”;

d. In paragraph (c) of the provision by removing “or Balance of Payments Program”; and

e. In Alternate I by removing “(Feb 2000)” and adding “(Date)” in its place; and by removing “or Balance of Payments Program”. The revised text reads as follows:

**52.225-10 Notice of Buy American Act Requirement—Construction Materials.**

\* \* \* \* \*

Notice of Buy American Act Requirement—Construction Materials (Date)

\* \* \* \* \*

(End of provision)

28. Amend section 52.225-11 by—  
a. Revising the section and clause headings;

b. Revising paragraph (b)(4)(i) of the clause;

c. Removing the words “or Balance of Payments Program” from paragraph (b)(4)(ii), the introductory text of paragraph (c), the first sentence of paragraph (c)(2), and paragraph (c)(3) (twice); and

d. Removing from Alternate I “(June 2000)” and adding “(Date)” in its place; and revising paragraph (b)(1) of Alternate I. The revised text reads as follows:

**52.225-11 Buy American Act—Construction Materials under Trade Agreements.**

\* \* \* \* \*

Buy American Act—Construction Materials  
Under Trade Agreements (Date)

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

\* \* \* \* \*

(End of clause)

*Alternate I (Date)* \* \* \*

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

\* \* \* \* \*

29. Amend section 52.225–12 by—

a. Revising the section and provision headings;

b. Removing “Balance of Payments Program—” from paragraph (a) of the provision;

c. Removing “or Balance of Payments Program” from the first and third sentences of paragraph (b) of the provision;

d. Removing “or Balance of Payments Program” from paragraph (c)(1) of the provision;

e. Removing “(Feb 2000)” from Alternate I and adding “(Date)” in its place, and by removing “or Balance of Payments Program” from paragraph (b) of the Alternate; and

f. Removing “(June 2000)” from Alternate II and adding “(Date)” in its place, and by removing “Balance of Payments Program—” from paragraph (a) of the Alternate. The revised text reads as follows:

**52.225–12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.**

\* \* \* \* \*

Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements (Date)

\* \* \* \* \*

(End of provision)

[FR Doc. 00–23119 Filed 9–8–00; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 2, 31, and 35**

[FAR Case 2000–401]

RIN 9000–AI91

**Federal Acquisition Regulation;  
Definitions of “Applied Research” and  
“Development”**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to move the definitions of “Applied Research” and “Development” from separate areas of the FAR into the same FAR section pertaining to definitions. **DATES:** Interested parties should submit comments in writing on or before November 13, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.2000–401@gsa.gov

Please submit comments only and cite FAR case 2000–401 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ralph De Stefano, Procurement Analyst, at (202) 501–1757. Please cite FAR case 2000–401.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This rule amends FAR Subpart 2.1 to consolidate the definitions of “Applied Research” and “Development” found in 31.205–18 and 35.001 into the definitions section at FAR 2.101 and makes editorial changes for clarity. The Councils’ amendments are intended to reorganize, simplify, and clarify FAR language. The Councils do not intend any substantive changes to the FAR by these amendments.

This is not a significant regulatory action and, therefore, was not subject to

review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. We invite comments from small businesses and other interested parties. We will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–401), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 2, 31, and 35**

Government procurement.

Dated: September 5, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 31, and 35 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 31, and 35 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 2—DEFINITIONS OF WORDS  
AND TERMS**

2. Amend section 2.101 by adding the definitions “Applied research” and “Development” to read as follows:

**2.101 Definitions.**

\* \* \* \* \*

*Applied research*—(1) Means effort that—

(i) Normally follows basic research, but may not be severable from the related basic research;

(ii) Attempts to determine and exploit the potential of scientific discoveries or

improvements in technology, materials, processes, methods, devices, or techniques; and

(iii) Attempts to advance the state of the art.

(2) Does not include efforts whose principle aim is design, development, or test of specific items or services to be considered for sale.

\* \* \* \* \*

*Development*—(1) Means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives.

(2) Includes the functions of design engineering, prototyping, and engineering testing, but does not include—

(i) Subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product; or

(ii) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

\* \* \* \* \*

#### **PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

3. Amend section 31.205–18 by revising paragraph (a), removing the definitions “Applied research” and “Development” and removing “as used in this subsection” from the definitions of “Basic research”, “Bid and proposal (B&P) costs”, “Company”, “Independent research and development (IR&D)”, and “Systems and other concept formulation studies”. The revised text reads as follows:

##### **31.205–18 Independent research and development and bid and proposal costs.**

(a) *Definitions.* As used in this subsection—

\* \* \* \* \*

4. Revise paragraph (b)(1) of section 31.205–25 to read as follows:

##### **31.205–25 Manufacturing and production engineering costs.**

\* \* \* \* \*

(b) \* \* \*

(1) Basic research and applied research efforts related to new technology, materials, systems, processes, methods, equipment, tools and techniques. Such technical effort is governed by 31.205–18, Independent research and development and bid and proposal costs; and

\* \* \* \* \*

#### **PART 35—RESEARCH AND DEVELOPMENT CONTRACTING**

##### **35.001 [Amended]**

5. Amend section 35.001 by removing the definitions “Applied research” and “Development”.

[FR Doc. 00–23120 Filed 9–8–00; 8:45 am]

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**LIST OF PUBLIC LAWS**

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This is a continuing list of  
public bills from the current

session of Congress which  
have become Federal laws. It  
may be used in conjunction  
with "PLUS" (Public Laws  
Update Service) on 202-523-  
6641. This list is also  
available online at [http://  
www.nara.gov/fedreg](http://www.nara.gov/fedreg).

The text of laws is not  
published in the **Federal  
Register** but may be ordered  
in "slip law" (individual  
pamphlet) form from the  
Superintendent of Documents,  
U.S. Government Printing  
Office, Washington, DC 20402  
(phone, 202-512-1808). The  
text will also be made  
available on the Internet from

GPO Access at [http://  
www.access.gpo.gov/nara/  
index.html](http://www.access.gpo.gov/nara/index.html). Some laws may  
not yet be available.

**H.R. 3519/P.L. 106-264**

Global AIDS and Tuberculosis  
Relief Act of 2000 (Aug. 19,  
2000; 114 Stat. 748)

**Last List August 22, 2000**

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An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
<b>1, 2 (2 Reserved)</b> .....	(869-038-00001-3) .....	6.50	Apr. 1, 2000
<b>3 (1997 Compilation and Parts 100 and 101)</b> .....	(869-042-00002-1) .....	22.00	<sup>1</sup> Jan. 1, 2000
<b>4</b> .....	(869-042-00003-0) .....	8.50	Jan. 1, 2000
<b>5 Parts:</b>			
1-699 .....	(869-042-00004-8) .....	43.00	Jan. 1, 2000
700-1199 .....	(869-042-00005-6) .....	31.00	Jan. 1, 2000
1200-End, 6 (6 Reserved) .....	(869-042-00006-4) .....	48.00	Jan. 1, 2000
<b>7 Parts:</b>			
1-26 .....	(869-042-00007-2) .....	28.00	Jan. 1, 2000
27-52 .....	(869-042-00008-1) .....	35.00	Jan. 1, 2000
53-209 .....	(869-042-00009-9) .....	22.00	Jan. 1, 2000
210-299 .....	(869-042-00010-2) .....	54.00	Jan. 1, 2000
300-399 .....	(869-042-00011-1) .....	29.00	Jan. 1, 2000
400-699 .....	(869-042-00012-9) .....	41.00	Jan. 1, 2000
700-899 .....	(869-042-00013-7) .....	37.00	Jan. 1, 2000
900-999 .....	(869-042-00014-5) .....	46.00	Jan. 1, 2000
1000-1199 .....	(869-042-00015-3) .....	18.00	Jan. 1, 2000
1200-1599 .....	(869-042-00016-1) .....	44.00	Jan. 1, 2000
1600-1899 .....	(869-042-00017-0) .....	61.00	Jan. 1, 2000
1900-1939 .....	(869-042-00018-8) .....	21.00	Jan. 1, 2000
1940-1949 .....	(869-042-00019-6) .....	37.00	Jan. 1, 2000
1950-1999 .....	(869-042-00020-0) .....	38.00	Jan. 1, 2000
2000-End .....	(869-042-00021-8) .....	31.00	Jan. 1, 2000
<b>8</b> .....	(869-042-00022-6) .....	41.00	Jan. 1, 2000
<b>9 Parts:</b>			
1-199 .....	(869-042-00023-4) .....	46.00	Jan. 1, 2000
200-End .....	(869-042-00024-2) .....	44.00	Jan. 1, 2000
<b>10 Parts:</b>			
1-50 .....	(869-042-00025-1) .....	46.00	Jan. 1, 2000
51-199 .....	(869-042-00026-9) .....	38.00	Jan. 1, 2000
200-499 .....	(869-042-00027-7) .....	38.00	Jan. 1, 2000
500-End .....	(869-042-00028-5) .....	48.00	Jan. 1, 2000
<b>11</b> .....	(869-042-00029-3) .....	23.00	Jan. 1, 2000
<b>12 Parts:</b>			
1-199 .....	(869-042-00030-7) .....	18.00	Jan. 1, 2000
200-219 .....	(869-042-00031-5) .....	22.00	Jan. 1, 2000
220-299 .....	(869-042-00032-3) .....	45.00	Jan. 1, 2000
300-499 .....	(869-042-00033-1) .....	29.00	Jan. 1, 2000
500-599 .....	(869-042-00034-0) .....	26.00	Jan. 1, 2000
600-End .....	(869-042-00035-8) .....	53.00	Jan. 1, 2000
<b>13</b> .....	(869-042-00036-6) .....	35.00	Jan. 1, 2000

Title	Stock Number	Price	Revision Date
<b>14 Parts:</b>			
1-59 .....	(869-042-00037-4) .....	58.00	Jan. 1, 2000
60-139 .....	(869-042-00038-2) .....	46.00	Jan. 1, 2000
140-199 .....	(869-038-00039-1) .....	17.00	<sup>4</sup> Jan. 1, 2000
200-1199 .....	(869-042-00040-4) .....	29.00	Jan. 1, 2000
1200-End .....	(869-042-00041-2) .....	25.00	Jan. 1, 2000
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300-799 .....	(869-042-00043-9) .....	45.00	Jan. 1, 2000
800-End .....	(869-042-00044-7) .....	26.00	Jan. 1, 2000
<b>16 Parts:</b>			
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1000-End .....	(869-042-00046-3) .....	43.00	Jan. 1, 2000
<b>17 Parts:</b>			
1-199 .....	(869-042-00048-0) .....	32.00	Apr. 1, 2000
200-239 .....	(869-042-00049-8) .....	38.00	Apr. 1, 2000
240-End .....	(869-042-00050-1) .....	49.00	Apr. 1, 2000
<b>18 Parts:</b>			
1-399 .....	(869-042-00051-0) .....	54.00	Apr. 1, 2000
400-End .....	(869-042-00052-8) .....	15.00	Apr. 1, 2000
<b>19 Parts:</b>			
1-140 .....	(869-042-00053-6) .....	40.00	Apr. 1, 2000
141-199 .....	(869-042-00054-4) .....	40.00	Apr. 1, 2000
200-End .....	(869-042-00055-2) .....	20.00	Apr. 1, 2000
<b>20 Parts:</b>			
1-399 .....	(869-042-00056-1) .....	33.00	Apr. 1, 2000
400-499 .....	(869-042-00057-9) .....	56.00	Apr. 1, 2000
500-End .....	(869-042-00058-7) .....	58.00	<sup>7</sup> Apr. 1, 2000
<b>21 Parts:</b>			
1-99 .....	(869-042-00059-5) .....	26.00	Apr. 1, 2000
100-169 .....	(869-042-00060-9) .....	30.00	Apr. 1, 2000
170-199 .....	(869-042-00061-7) .....	29.00	Apr. 1, 2000
200-299 .....	(869-042-00062-5) .....	13.00	Apr. 1, 2000
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500-599 .....	(869-042-00064-1) .....	31.00	Apr. 1, 2000
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800-1299 .....	(869-042-00066-8) .....	38.00	Apr. 1, 2000
1300-End .....	(869-042-00067-6) .....	15.00	Apr. 1, 2000
<b>22 Parts:</b>			
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300-End .....	(869-042-00069-2) .....	31.00	Apr. 1, 2000
<b>23</b> .....	(869-042-00070-6) .....	29.00	Apr. 1, 2000
<b>24 Parts:</b>			
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200-499 .....	(869-042-00072-2) .....	37.00	Apr. 1, 2000
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700-1699 .....	(869-042-00074-9) .....	46.00	Apr. 1, 2000
1700-End .....	(869-042-00075-7) .....	18.00	<sup>5</sup> Apr. 1, 2000
<b>25</b> .....	(869-042-00076-5) .....	52.00	Apr. 1, 2000
<b>26 Parts:</b>			
§§ 1.0-1.160 .....	(869-042-00077-3) .....	31.00	Apr. 1, 2000
§§ 1.161-1.169 .....	(869-042-00078-1) .....	56.00	Apr. 1, 2000
§§ 1.170-1.300 .....	(869-042-00079-0) .....	38.00	Apr. 1, 2000
§§ 1.301-1.400 .....	(869-042-00080-3) .....	29.00	Apr. 1, 2000
§§ 1.401-1.440 .....	(869-042-00081-1) .....	47.00	Apr. 1, 2000
§§ 1.441-1.500 .....	(869-042-00082-0) .....	36.00	Apr. 1, 2000
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§§ 1.1001-1.1400 .....	(869-042-00087-1) .....	45.00	Apr. 1, 2000
§§ 1.1401-End .....	(869-042-00088-9) .....	66.00	Apr. 1, 2000
2-29 .....	(869-042-00089-7) .....	45.00	Apr. 1, 2000
30-39 .....	(869-042-00090-1) .....	31.00	Apr. 1, 2000
40-49 .....	(869-042-00091-9) .....	18.00	Apr. 1, 2000
50-299 .....	(869-042-00092-7) .....	23.00	Apr. 1, 2000
300-499 .....	(869-042-00093-5) .....	43.00	Apr. 1, 2000
500-599 .....	(869-042-00094-3) .....	12.00	Apr. 1, 2000
600-End .....	(869-042-00095-1) .....	12.00	Apr. 1, 2000
<b>27 Parts:</b>			
1-199 .....	(869-042-00096-0) .....	59.00	Apr. 1, 2000

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
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<b>28 Parts:</b> .....				266-299 .....	(869-038-00152-7) .....	33.00	July 1, 1999
0-42 .....	(869-038-00098-9) .....	39.00	July 1, 1999	300-399 .....	(869-038-00153-5) .....	26.00	July 1, 1999
43-end .....	(869-038-00099-7) .....	32.00	July 1, 1999	400-424 .....	(869-038-00154-3) .....	34.00	July 1, 1999
<b>29 Parts:</b> .....				425-699 .....	(869-038-00155-1) .....	44.00	July 1, 1999
0-99 .....	(869-042-00100-1) .....	33.00	July 1, 2000	700-789 .....	(869-038-00156-0) .....	42.00	July 1, 1999
100-499 .....	(869-038-00101-2) .....	13.00	July 1, 1999	790-End .....	(869-042-00157-5) .....	23.00	<sup>6</sup> July 1, 2000
500-899 .....	(869-038-00102-1) .....	40.00	<sup>7</sup> July 1, 1999	<b>41 Chapters:</b> .....			
900-1899 .....	(869-042-00103-6) .....	24.00	July 1, 2000	1, 1-1 to 1-10 .....		13.00	<sup>3</sup> July 1, 1984
1900-1910 (§§ 1900 to 1910.999) .....	(869-042-00104-4) .....	46.00	<sup>6</sup> July 1, 2000	1, 1-11 to Appendix, 2 (2 Reserved) .....		13.00	<sup>3</sup> July 1, 1984
1910 (§§ 1910.1000 to end) .....	(869-042-00105-2) .....	28.00	<sup>6</sup> July 1, 2000	3-6 .....		14.00	<sup>3</sup> July 1, 1984
1911-1925 .....	(869-038-00106-3) .....	18.00	July 1, 1999	7 .....		6.00	<sup>3</sup> July 1, 1984
1926 .....	(869-042-00107-9) .....	30.00	<sup>6</sup> July 1, 2000	8 .....		4.50	<sup>3</sup> July 1, 1984
1927-End .....	(869-038-00108-0) .....	43.00	July 1, 1999	9 .....		13.00	<sup>3</sup> July 1, 1984
<b>30 Parts:</b> .....				10-17 .....		9.50	<sup>3</sup> July 1, 1984
1-199 .....	(869-038-00109-8) .....	35.00	July 1, 1999	18, Vol. I, Parts 1-5 .....		13.00	<sup>3</sup> July 1, 1984
200-699 .....	(869-038-00110-1) .....	30.00	July 1, 1999	18, Vol. II, Parts 6-19 .....		13.00	<sup>3</sup> July 1, 1984
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<b>31 Parts:</b> .....				19-100 .....		13.00	<sup>3</sup> July 1, 1984
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200-End .....	(869-038-00113-6) .....	48.00	July 1, 1999	101 .....	(869-038-00159-4) .....	39.00	July 1, 1999
<b>32 Parts:</b> .....				102-200 .....	(869-038-00160-8) .....	16.00	July 1, 1999
1-39, Vol. I .....		15.00	<sup>2</sup> July 1, 1984	201-End .....	(869-038-00161-6) .....	15.00	July 1, 1999
1-39, Vol. II .....		19.00	<sup>2</sup> July 1, 1984	<b>42 Parts:</b> .....			
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1-190 .....	(869-038-00114-4) .....	46.00	July 1, 1999	400-429 .....	(869-038-00163-2) .....	44.00	Oct. 1, 1999
191-399 .....	(869-038-00115-2) .....	55.00	July 1, 1999	430-End .....	(869-038-00164-1) .....	54.00	Oct. 1, 1999
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800-End .....	(869-038-00119-5) .....	27.00	July 1, 1999	<b>44</b> .....	(869-038-00167-5) .....	28.00	Oct. 1, 1999
<b>33 Parts:</b> .....				<b>45 Parts:</b> .....			
1-124 .....	(869-038-00120-9) .....	32.00	July 1, 1999	1-199 .....	(869-038-00168-3) .....	33.00	Oct. 1, 1999
125-199 .....	(869-038-00121-7) .....	41.00	July 1, 1999	200-499 .....	(869-038-00169-1) .....	16.00	Oct. 1, 1999
200-End .....	(869-038-00122-5) .....	33.00	July 1, 1999	500-1199 .....	(869-038-00170-5) .....	30.00	Oct. 1, 1999
<b>34 Parts:</b> .....				1200-End .....	(869-038-00171-3) .....	40.00	Oct. 1, 1999
1-299 .....	(869-038-00123-3) .....	28.00	July 1, 1999	<b>46 Parts:</b> .....			
300-399 .....	(869-038-00124-1) .....	25.00	July 1, 1999	1-40 .....	(869-038-00172-1) .....	27.00	Oct. 1, 1999
400-End .....	(869-038-00125-0) .....	46.00	July 1, 1999	41-69 .....	(869-038-00173-0) .....	23.00	Oct. 1, 1999
<b>35</b> .....	(869-042-00126-5) .....	10.00	July 1, 2000	70-89 .....	(869-038-00174-8) .....	8.00	Oct. 1, 1999
<b>36 Parts</b> .....				90-139 .....	(869-038-00175-6) .....	26.00	Oct. 1, 1999
1-199 .....	(869-042-00127-3) .....	24.00	July 1, 2000	140-155 .....	(869-038-00176-4) .....	15.00	Oct. 1, 1999
*200-299 .....	(869-042-00128-1) .....	24.00	July 1, 2000	156-165 .....	(869-038-00177-2) .....	21.00	Oct. 1, 1999
300-End .....	(869-038-00129-2) .....	38.00	July 1, 1999	166-199 .....	(869-038-00178-1) .....	27.00	Oct. 1, 1999
<b>37</b> .....	(869-038-00130-6) .....	29.00	July 1, 1999	200-499 .....	(869-038-00179-9) .....	23.00	Oct. 1, 1999
<b>38 Parts:</b> .....				500-End .....	(869-038-00180-2) .....	15.00	Oct. 1, 1999
0-17 .....	(869-038-00131-4) .....	37.00	July 1, 1999	<b>47 Parts:</b> .....			
18-End .....	(869-038-00132-2) .....	41.00	July 1, 1999	0-19 .....	(869-038-00181-1) .....	39.00	Oct. 1, 1999
<b>39</b> .....	(869-042-00133-8) .....	28.00	July 1, 2000	20-39 .....	(869-038-00182-9) .....	26.00	Oct. 1, 1999
<b>40 Parts:</b> .....				40-69 .....	(869-038-00183-7) .....	26.00	Oct. 1, 1999
1-49 .....	(869-038-00134-9) .....	33.00	July 1, 1999	70-79 .....	(869-038-00184-5) .....	39.00	Oct. 1, 1999
50-51 .....	(869-038-00135-7) .....	25.00	July 1, 1999	80-End .....	(869-038-00185-3) .....	40.00	Oct. 1, 1999
52 (52.01-52.1018) .....	(869-038-00136-5) .....	33.00	July 1, 1999	<b>48 Chapters:</b> .....			
52 (52.1019-End) .....	(869-038-00137-3) .....	37.00	July 1, 1999	1 (Parts 1-51) .....	(869-038-00186-1) .....	55.00	Oct. 1, 1999
53-59 .....	(869-038-00138-1) .....	19.00	July 1, 1999	1 (Parts 52-99) .....	(869-038-00187-0) .....	30.00	Oct. 1, 1999
60 .....	(869-038-00139-0) .....	59.00	July 1, 1999	2 (Parts 201-299) .....	(869-038-00188-8) .....	36.00	Oct. 1, 1999
61-62 .....	(869-038-00140-3) .....	19.00	July 1, 1999	3-6 .....	(869-038-00189-6) .....	27.00	Oct. 1, 1999
63 (63.1-63.1119) .....	(869-038-00141-1) .....	58.00	July 1, 1999	7-14 .....	(869-038-00190-0) .....	35.00	Oct. 1, 1999
63 (63.1200-End) .....	(869-038-00142-0) .....	36.00	July 1, 1999	15-28 .....	(869-038-00191-8) .....	36.00	Oct. 1, 1999
64-71 .....	(869-042-00143-5) .....	12.00	July 1, 2000	29-End .....	(869-038-00192-6) .....	25.00	Oct. 1, 1999
72-80 .....	(869-038-00144-6) .....	41.00	July 1, 1999	<b>49 Parts:</b> .....			
81-85 .....	(869-038-00145-4) .....	33.00	July 1, 1999	1-99 .....	(869-038-00193-4) .....	34.00	Oct. 1, 1999
86 .....	(869-038-00146-2) .....	59.00	July 1, 1999	100-185 .....	(869-038-00194-2) .....	53.00	Oct. 1, 1999
87-135 .....	(869-038-00146-1) .....	53.00	July 1, 1999	186-199 .....	(869-038-00195-1) .....	13.00	Oct. 1, 1999
136-149 .....	(869-038-00148-9) .....	40.00	July 1, 1999	200-399 .....	(869-038-00196-9) .....	53.00	Oct. 1, 1999
150-189 .....	(869-038-00149-7) .....	35.00	July 1, 1999	400-999 .....	(869-038-00197-7) .....	57.00	Oct. 1, 1999
*190-259 .....	(869-042-00150-8) .....	25.00	July 1, 2000	1000-1199 .....	(869-038-00198-5) .....	17.00	Oct. 1, 1999
				1200-End .....	(869-038-00199-3) .....	14.00	Oct. 1, 1999
				<b>50 Parts:</b> .....			
				1-199 .....	(869-038-00200-1) .....	43.00	Oct. 1, 1999
				200-599 .....	(869-038-00201-9) .....	22.00	Oct. 1, 1999

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Title	Stock Number	Price	Revision Date
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CFR Index and Findings			
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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained.

<sup>7</sup> No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.